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सं. 8] नई दिल्ली, फरवरी 14—फरवरी 20, 2016, शनिवार/माघ 25—फाल्गुन 1, 1937
No. 8] NEW DELHI, FEBRUARY 14—FEBRUARY 20, 2016, SATURDAY/MAGHA 25—PHALGUNA 1, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कोयला मंत्रालय

नई दिल्ली, 19 फरवरी, 2016

का.आ. 302.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में कोयला अभिप्राप्त किए जाने की संभावना है;

और रेखांक संख्या एसईसीएल/बीएसपी/जीएम (पीएलजी)/ भूमि/479, तारीख 2 दिसम्बर, 2015 का जिसमें उक्त अनुसूची में वर्णित भूमि क्षेत्र के ब्यौरे अन्तर्विष्ट हैं, निरीक्षण कलेक्टर, जिला सुरजपुर और सरगुजा (छत्तीसगढ़) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता — 700001 के कार्यालय में या साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है;

अतः अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1)

द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पूर्वोक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वक्षण करने के अपने आशय की सूचना देती है ;

उपरोक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति—

- (i) संपूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उसके उपर किसी अधिकार के अर्जन पर आक्षेप ; या
- (ii) उक्त अधिनियम की धारा 4 की उप-धारा (3) के अधीन की गई कार्रवाई से हुई क्षति या सम्भावित क्षति अधिनियम की धारा 6 की उप-धारा (1) के अधीन किसी नुकसानी के लिये प्रतिकर का दावा कर सकेगा; या
- (iii) उक्त अधिनियम की धारा 13 की उपधारा (1) के अधीन समाप्त हो गई पूर्वक्षण अनुज्ञप्तियों के संबंध में या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन समाप्त हो गये खनन पट्टे के लिये प्रतिकर

का दावा कर सकेगा और उक्त अधिनियम की धारा 13 की उप-धारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों के संबंध में उपगत व्यय को उपदर्शित करने के लिये उक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को सुपुर्द करेगा,

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व), साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) को सौंपेगा।

वृत्त

रेहर पश्चिम ब्लॉक, विश्रामपुर क्षेत्र,

जिला— सुरजपुर और सरगुजा, छत्तीसगढ़

(रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/ 479, तारीख 2 दिसम्बर, 2015)

खंड

क्रम सं.	ग्राम का नाम	ग्राम संख्या	पटवारी हल्का संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियां
1.	जोबगा	275	11	सुरजपुर	सुरजपुर	204.300	भाग
2.	पोंडी	270	12	सुरजपुर	सुरजपुर	397.880	भाग
3.	सपकरा	418	27	सुरजपुर	सुरजपुर	108.640	भाग
4.	मानी	659	12	सुरजपुर	सुरजपुर	667.780	भाग
5.	गेतरा	138	01	लखनपुर	सरगुजा	366.440	भाग
कुल : 1745.040 हेक्टर (लगभग) या 4311.99 एकड़ (लगभग)							

खंड

क्र. सं.	कम्पार्टमेंट संख्या	वन का प्रकार	क्षेत्र हेक्टर में	टिप्पणियां
1.	भाग 1728, भाग 1729, भाग 1759, भाग 1760, भाग 1761	संरक्षित वन	593.110	भाग
2.	वीवीएन भाग 1843, वीवीएन भाग 1844.	संरक्षित वन	389.173	भाग
कुल : 982.283 हेक्टर (लगभग) या 2427.22 एकड़ (लगभग)				

कुल योग (क+ख) = 2727.323 हेक्टर (लगभग) या 6739.21 एकड़ (लगभग)

खंड

क—ख रेखा, बिन्दु 'क' से आरंभ होती है और ग्राम पोंडी और मानी के उत्तरी, ग्राम सपकरा के मध्य भाग से गुजरती हुई ग्राम सपकरा के पूर्वी सीमा में बिन्दु 'ख' पर मिलती है।

ख—ग रेखा, बिन्दु 'ख' से आरंभ होती है और ग्राम सपकार, मानी के पूर्वी सीमा से गुजरती हुई रेहर नदी के पश्चिमी किनारे में बिन्दु 'ग' पर मिलती है।

ग—घ रेखा, बिन्दु 'ग' से आरंभ होती है और ग्राम गेतरा के मध्य भाग, संरक्षित वन से होती हुई बिन्दु 'घ' पर मिलती है।

घ—क रेखा, बिन्दु 'घ' से आरंभ होती है और संरक्षित वन एवं ग्राम जोबगा के पूर्वी भाग से होती हुई आरंभिक बिन्दु 'क' पर मिलती है।

[फा. सं. 43015/3/2016—पीआरआईडब्ल्यू—I]

सुजीत कुमार, अवर सचिव

MINISTRY OF COAL

New Delhi, the 19th February, 2016

S.O. 302.—Whereas it appears to the Central Government that Coal is likely to be obtained from the lands in the locality mentioned in the Schedule annexed hereto;

And whereas, the plan bearing number/SECL/BSP/GM(PLG)/LAND/479, dated the 2nd December, 2015 containing details of the area covered by this notification may be inspected at the office of the Collector, District Surajpur and Surguja (Chhattisgarh) or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh);

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in the land described in the aforesaid Schedule;

Any person interested in the land described in the above mentioned Schedule may—

- (i) Objection to the acquisition of the whole or any part of the land, or of any rights in over such lands; or
- (ii) claim compensation under sub-section (1) of section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 thereof; or
- (iii) claim compensation under sub-section (1) of section 13 of the said Act, in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect, and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the Officer-in-Charge or Head of the Department (Revenue), South Eastern Coalfields Limited, Seepat Road, Bilaspur-495006 (Chhattisgarh) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

Rehar West Block, Bishrampur Area,

District- Surajpur and Surguja, Chhattisgarh

(Plan bearing number SECL/BSP/GM(PLG)/LAND/479, dated the 2nd December, 2015)

(A) Revenue Land :

Sl. No.	Name of Village	Village Number	Patwari Halka Number	Tahsil	District	Area in hectares	Remarks
1.	Jobga	275	11	Surajpur	Surajpur	204.300	Part
2.	Pondi	270	12	Surajpur	Surajpur	397.880	Part
3.	Sapkara	418	27	Surajpur	Surajpur	108.640	Part
4.	Mani	659	12	Surajpur	Surajpur	667.780	Part
5.	Getra	138	01	Lakhanpur	Surguja	366.440	Part

Total: 1745.040 hectares (approximately) or 4311.99 acres (approximately)

(B) Protected Forest Land:

Sl. No.	Compartment number	Type of Forest	Area in hectares	Remarks
1.	Part 1728, Part 1729, Part 1759, Part 1760, Part 1761	Protected Forest	593.110	Part
2.	VVN Part 1843, VVN Part 1844	Protected Forest	389.173	Part

Total: 982.283 hectares (approximately) or 2427.22 acres (approximately)

Grand total (A+B)= 2727.323 hectares (approximately) or 6739.21 acres (approximately)

Boundary Description:

- A-B Line starts from point 'A' and passes through northern part of village Pondi and Mani, middle part of village Sapkara and meets at point 'B' on the eastern boundary of village Sapkara.
- B-C Line starts from point 'B' and passes along eastern boundary of villages Sapkara, Mani and meets at point 'C' on the western bank of Rehar river.
- C-D Line starts from point 'C' and passes through middle part of village Getra, Protected Forest and meets at point 'D'.
- D-A Line starts from point 'D' and passes through Protected Forest, eastern part of village Jobga and meets at starting point 'A'.

[F.No. 43015/3/2016-PRIW-I]

SUJEET KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 10 फरवरी, 2016

का.आ. 303.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचात [संदर्भ (सीजीआईटीए) सं. 97/2005] को प्रकाशित करती है जो केन्द्रीय सरकार को 09/02/2016 को प्राप्त हुआ था।

[सं. एल-40012/17/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 10th February, 2016

S.O. 303 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [I.D. Reference (CGITA) No. 97/2005] of the Central Government Industrial Tribunal Cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication and their workman, which was received by the Central Government on 09/02/2016.

[No. L-40012/17/2003-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi, Presiding Officer,
CGIT cum Labour Court,

Ahmedabad,

Dated 13th January, 2016

Reference: (CGITA) No.97/2005

1. The Sub-Divisional Officer, Telegraphs,
Telecom Deptt.,
Deesa (BK) 0385535
2. The Chief General Manager,
Telecom Deptt., BSNL,
Khanpur,
Ahmedabad
3. The General Manger, Telecom Distt.,
Telecom Deptt.,
Palanpur Telecom,
Dist. Joravar Palace,
Palanpur (BK)-385001

...First Party

Vs.

Their Workman

Sh. Harishankar Bhagat,

Through the Org. Secretary,

The association of Railway &

Post Employees,

15, Shashi Apartment,

Nr. Anjalee Cinema,

Vasna Road, Ahmedabad

...Second Party

For the First Party : Sh. N.K. Trivedi,
Advocate

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/17/2003-IR(DU) dated 18.10.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Association of Railway & Post Employees, Ahmedabad for reinstatement of Shri Harishankar Bhagat, Ext. Casual Labour by the management of Telecom District Manager, Palanpur/ S. D.O.T. Deesa, Bharat Sanchar Nigam Ltd., (Telecom Department) is proper and justified ? If so, to what relief the concern workman is entitled for and since when?”

2. This reference dates back to 18.10.2005. All the parties were served by the registered post. Sh. N.K. Trivedi filed vakalatnama on behalf of the first party. Number of the opportunities was given to the second party for filing the statement of claim but the statement of claim was not filed by the second party.

3. Shri N.K. Trivedi moved an application (Ex.4) alleging that enough time has been given to the second party to file the statement of claim, therefore, the case may be closed in default of the second party. Application deserves to be allowed.

4. In the light of the aforesaid circumstances, it appears that second party is not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

का.आ. 304.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) सं. 1216/2004] को प्रकाशित करती है जो केन्द्रीय सरकार को 09/02/2016 को प्राप्त हुआ था।

[सं. एल-40011/29/2002-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th February, 2016

S.O. 304.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [I.D. Reference (CGITA) No. 1216/2004] of the Central Government Industrial Tribunal Cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 09/02/2016.

[No. L-40011/29/2002-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi, Presiding Officer,
CGIT cum Labour Court,

Ahmedabad,

Dated 6th January, 2016

Reference: (CGITA) No. 1216/2004

Reference: (I.T.C.) No. 7/2003

The General Manager,
Telecom District,
BSNL, Rajkot Division,
Lohanagar Building,
Gondal Road,
Rajkot-1

...First Party

Vs.

Their Workman
Through the President,
Saurashtra Employees Union,
'City Shops' 3rd Floor,
Opp. Jagnath Police Chowky,
Dr. Yagnik Road,
Rajkot

...Second Party

For the First Party : Sh. H.R. Raval, Advocate

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L- 40011/29/2002-IR(DU) dated 09.01.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Telecom Dept. (Now BSNL) in imposing the penalty of stoppage of one increment for 3 years with cumulative effect on Sh. H.P. Joshi is just, fair and legal? If not, to what relief the workman is entitled?”

2. This reference dates back to 09.01.2003. Both the parties putting their appearance. But second party did not prefer to submit his statement of claim despite giving number of opportunities. Moreover, by the Gazette of India, Extraordinary, Part II, Section 3, Sub Section (ii), Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personal and Training), New Delhi dated 31.10.2008, Bharat Sanchar Nigam Limited has been kept out the jurisdiction of C.G.I.T.. Thus, the present reference is not maintainable.

3. Moreover, both the parties are not appeared to be interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

का.आ. 305.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) सं. 1161/2004] को प्रकाशित करती है जो केन्द्रीय सरकार को 09/02/2016 को प्राप्त हुआ था।

[सं. एल-40012/201/96-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th February, 2016

S.O. 305.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [I.D. Reference (CGITA) No. 1161/2004] of the Central Government Industrial Tribunal Cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Department of Telecommunication and their workman, which was received by the Central Government on 09/02/2016.

[No. L-40012/201/96-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated 8th January, 2016

Reference: (CGITA) No. 1161/2004

Reference: (I.T.C.) No. 15/2000

1. The Sub Divisional Officer,
Telecom,
Department of Telecom,
Bhuj-370001
2. The Sub Divisional officer,
Phones D/o. Telecom
Bhuj

...First Party

Vs.

Their Workman
Sh. Bindeshwar Bhagat,
Through the General Secretary,

Western Railway Kamdar Sangh,
T.D. 2., -17,
Gurunagar,
Gandhidham

...Second Party

For the First Party : Smt. P.V. Kharsani, Advocate

For the Second Party : -

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L- 40012/201/96-IR(DU) dated 06.11.2000 referred the dispute for adjudication to the Industrial Tribunal, Rajkot(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the sub-Division officer, Telegraphs, Bhuj in terminating the services of Sh. Bindeshwar Bhagat, Mazdoor under Sub-Divisional Officer, Telegraphs,, Bhuj w.e.f. 31.08.1988 is just, proper and legal? If not, to what relief the workman is entitled?”

2. This reference dates back to 06.11.2000. Both the parties have been absent since last several dates and second party has also not filed the statement of claim. On some of the date first party's counsel appeared. Thus, it appears that second party is not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

का.आ. 306.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स राजस्थान स्टेट माइन्स एण्ड मिनरल लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 46/1987) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.02.2016 को प्राप्त हुआ था।

[सं. एल-3(20)/86-कन. II/डी. III. बी]

नवीन कपूर, अवर सचिव

New Delhi, the 10th February, 2016

S.O. 306.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/1987) of the Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of

M/s. Rajasthan Mines and Mineral Ltd. and Others and their workman, which was received by the Central Government on 05-02-2016.

[No. L-3(20)/86-Con.II/D.III.B]

NAVEEN KAPOOR, Under Secy.

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 46/1987

रेफरेंस : केन्द्र सरकार, श्रम न्यायालय, नई दिल्ली का आदेश क्र.

3(20)/86-Con.II/D.III.B Date 17 June, 1987

मैसर्स राजस्थान स्टेट माइन्स एण्ड
मिनरल कर्मचारी संघ, उदयपुर ।
(रॉक फॉस्फेट खान के 137 कर्मचारी/श्रमिकगण)

....प्रार्थीगण

बनाम

1. राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर
2. मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज,
उदयपुर, 221, मोतीमगरी स्कीम,
पार्क के सामने, उदयपुर ...अप्रार्थीगण

उपस्थित :

पीठासीन अधिकारी- शुभा मेहता, आर.एच.जे.एस.

प्रार्थीगण की ओर से : श्री विक्रम सिंह नैन एवं
श्री एम. एफ. बैग

अप्रार्थी की ओर से : श्री विन्येंद्र अग्रवाल
अवार्ड

दिनांक 22.12.2015

केन्द्र सरकार, श्रम न्यायालय, नई दिल्ली की ओर से आदेश
3(20)/86-Con.II/D.III.B Date 17 June, 1987 के माध्यम से निम्न
विवाद इस न्यायाधिकरण का अधिनिर्णय हेतु निर्देशित किया गया -

“Whether the action of the management of M/s. Eastern Engineering Enterprises, Udaipur, Contractor, M/s Rajasthan/Mines & Mineral Ltd. (A Govt. of Rajasthan Undertaking), Udaipur in retrenching the 137 workmen of their Rock phosphate Mine is just and legal? If not, what relief are the workmen concerned entitled to?”

तत्पश्चात् केन्द्र सरकार, श्रम न्यायालय, नई दिल्ली की ओर से संशोधन आदेश F.No. L-3(20)/86-Con.II/D.III.(B) (Pt.) New Delhi, dated 21.11.2007 के माध्यम से निम्न विवाद इस न्यायाधिकरण को अधिनिर्णय हेतु निर्देशित किया गया -

“Whether the action of the management of M/s. Eastern Engineering Enterprises, Udaipur, Contractor, M/s Rajasthan/ Mines & Mineral Ltd. (A Govt. of Rajasthan Undertaking), Udaipur in retrenching the 137 workmen w.e.f. 30th July, 1985 is just and legal? If not, to what relief the workmen concerned are entitled to?”

उक्त निर्देशों के साथ प्राप्त 137 श्रमिकों की सूची निम्न प्रकार है -

क्रम सं.	नाम	पदनाम	नियुक्ति तिथि
1	2	3	4
1.	सर्व श्री के. सी. सरकारिया	शावल ऑपरेटर	24.07.1981
2.	पी.के. बालन	-	12.07.1981
3.	एस.एस. नायर	-	19.08.1981
4.	अमर सिंह	-	01.04.1981
5.	मौ. तस्लीम	सीनियर मैकेनिक	20.05.1981
6.	बी.पी. गुप्ता	-	24.05.1981
7.	महेन्द्र सिंह	-	06.08.1981
8.	वी.एम. जोय	-	23.09..1981
9.	कुन्दन लाल	डोजर ऑपरेटर	23.05.1981
10.	राजेन्द्र सिंह	-	08.09.1981
11.	बनारसी सिंह	-	13.09.1981
12.	रमजान बेग	ऑटो फिटर	06.10.1981
13.	सलीम खां	-	01.04.1982
14.	एस. शशीधरन	फिटर	11.06.1981
15.	एम. प्रकाशन	-	11.06.1981
16.	पी.के. मधुसूदन	-	01.08.1982
17.	अब्दुल बारी	जूनियर फिटर	24.05.1981
18.	मौ. सरफद्दीन	-	12.07.1981
19.	के. सुरेन्द्रन	जूनियर फिटर	12.07.1981
20.	अब्दुल अजीज	-	08.09.1981
21.	मौ. हनीफ	-	18.11.1981
22.	जुगल किशोर	कम्प्रेशर ऑपरेटर	20.05.1981
23.	भंवर सिंह	-	22.08.1981
24.	कल्लूराम रावत	-	05.09.1981
25.	नरेन्द्र डांगी	-	06.09.1981

1	2	3	4	1	2	3	4
26.	राजेन्द्र आहिरो	—	06.09.1981	61.	अजीत सिंह	—	13.04.1984
27.	आर.के. गुप्ता	—	08.09.1981	62.	महेन्द्र सिंह	—	22.08.1984
28.	धनेश्वर आहिरी	—	18.09.1981	63.	कन्नु जोशी	—	08.10.1984
29.	आर.के. मिश्रा	ड्रिल ऑपरेटर	12.07.1981	64.	रोडसिंह पंवार	फोरमेन	20.10.1981
30.	हरि गोस्वामी	—	12.07.1981	65.	मांगीलाल गुर्जर	—	04.09.1983
31.	कल्लू राम गौड	—	04.08.1981	66.	कैलाश धाबाई	सुपरवाईजर	01.03.1984
32.	फकीर मौहम्मद	—	08.09.1981	67.	हरिराम रावत	जूनियर सुपरवाईजर	20.10.1983
33.	जगदीश प्रसाद	—	20.10.1981	68.	मांगीलाल टेलर	—	23.09.1981
34.	मोहन लाल मीणा	—	05.09.1981	69.	मांगू सिंह	मजदूर	05.09.1981
35.	पन्ना बेरा	जैक हैमर	05.09.1981	70.	दलीचन्द	—	20.09.1981
36.	लालू राम	—	18.09.1981	71.	साका	—	01.07.1982
37.	नानूराम	—	29.09.1981	72.	बेरा	—	01.07.1982
38.	सदरुद्दीन खां	हैल्पर	24.05.1981	73.	मोती	—	01.07.1982
39.	एम. अशोकन	—	06.09.1981	74.	रामू	—	01.07.1982
40.	हरबन्स सिंह	—	06.08.1981	75.	चेन्ना	—	01.07.1982
41.	के. सोमन पिल्लाई	—	06.08.1981	76.	शंकर	—	01.07.1982
42.	वी.जे. थेमस कुट्टी	—	07.08.1981	77.	तोला मोती	—	03.05.1983
43.	एच.के. मिश्रा	—	18.08.1981	78.	कन्ना	—	03.05.1983
44.	विनय सिंह राजपूत	—	25.08.1981	79.	लिम्बा	—	03.05.1983
45.	शंकर दायमा	—	06.08.1981	80.	कर्मा	—	03.05.1983
46.	सोहन लाल ओथ	—	08.09.1981	81.	नाथू	—	03.05.1983
47.	मदनलाल आहिरि	—	18.09.1981	82.	के.वी. वान्डी	मजदूर	03.05.1983
48.	शशीधरन पिल्लाई	—	20.09.1981	83.	मेघराज	—	20.05.1983
49.	जोर्ज कुट्टी	—	20.09.1981	84.	बाबूदीन	—	20.05.1983
50.	पन्नलाल मीणा	—	20.09.1981	85.	किशनपाल	—	20.05.1983
51.	डी. मोहन	—	20.09.1981	86.	सांवरलाल	—	20.05.1983
52.	ख्यालीलाल जोशी	—	20.09.1981	87.	राजेन्द्र रावत	—	21.05.1983
53.	शंकरलाल कटारा	—	20.09.1981	88.	राजेन्द्र सिंह	—	22.05.1983
54.	लालूराम मीणा	—	20.10.1981	89.	महेन्द्र यादव	—	26.05.1983
55.	के.के. नायर	—	25.10.1981	90.	एम.के. गुप्ता	—	29.09.1983
56.	बालिस्टर	—	01.03.1982	91.	रंजीत सिंह	—	28.10.1983
57.	उमेश सिंह	—	01.07.1982	92.	मौ. अबरार	—	28.10.1983
58.	गोवर्धन सिंह	—	10.08.1983	93.	शिव बहादुर	—	06.11.1983
59.	मोहन राम	—	08.09.1983	94.	लक्ष्मण सिंह	—	
60.	गोपाल सिंह	क्लर्क	12.11.1983	95.	मोहन लाल	—	06.04.1984

1	2	3	4	1	2	3	4
96.	मेघ सिंह	-	01.07.1984	130.	किशनदास	-	01.12.1981
97.	शंकर सिंह	-	13.07.1984	131.	जवाद खां	-	06.07.1981
98.	पी.बी. सुन्द्रेन	वैल्डर	20.09.1981	132.	प्रभूलाल	-	20.05.1983
99.	एस.एम. नाथानी	-	10.10.1982	133.	उदयलाल	-	20.05.1983
100.	एस.एस. नायर	-	24.01.1984	134.	मजिद बेग	-	09.07.1984
101.	अब्दुल रहमान	टर्नर	01.06.1983	135.	रामलाल आहिरी	ट्रक चालक	10.01.1982
102.	गोपाल सिंह	चौकीदार		136.	रविन्द्र प्रकाश	-	24.05.1983
103.	पूरा	-		137.	मुख्त्यार खां	ऑटो इलेक्ट्रियन	13.11.1984
104.	पाल सिंह	-	01.11.1984	<p>उक्त निर्देश के प्राप्त होने के पश्चात् प्रार्थी मैसर्स राजस्थान स्टेट माइन्स एण्ड मिनरल्स लि. संघ उदयपुर द्वारा स्टेटमेंट ऑफ क्लेम विपक्षी क्रम 1 मैसर्स राजस्थान स्टेट माइन्स एण्ड मिनरल्स लि. संघ उदयपुर (आरएसएमएम) और विपक्षी संख्या 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज, उदयपुर (ईईई) के विरुद्ध इस अभिकथन को प्रस्तुत किया गया कि प्रार्थी कर्मचारी संघ एक पंजीकृत संघ है। झामर कोटडा खदानों पर कार्य करने वाले श्रमिक इस संघ के सदस्य हैं। विपक्षी क्रम 1, मैसर्स राजस्थान स्टेट माइन्स एण्ड मिनरल्स लि. उदयपुर, एक राजकीय उद्योग है, जो झामर कोटडा की खानों के मुख्य नियोजक है। विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज, उदयपुर, एक साझेदारी फर्म है, और ठेकेदार है, जिसे विपक्षी क्रम 1 ने खानों से उत्पादित माल हटाने और खानों के खदान का कार्य ठेके पर दे रखा है। विपक्षी क्रम 2 ने विपक्षी क्रम 1 के ठेके लिए गए कार्य को सम्पन्न करने के लिए सन् 1981 में लगभग 250 श्रमिकों को नियोजित किया था। श्रमिकों की संख्या घटती बढ़ती रहती थी।</p> <p>प्रार्थी का यह भी अभिकथन है कि विपक्षी क्रम 1 ने उनके यहां मान्यताप्राप्त यूनियन रॉक फॉस्फेट मजदूर संघ से दिनांक 19.05.1981 को एक समझौता किया था, जिसमें यह तय किया गया था कि विपक्षी क्रम 2 का कार्य समाप्त हो जाने पर उनके यहां कार्य करने वाले श्रमिकों को विपक्षी क्रम 1 अपने यहां नियोजन में प्राथमिकता देंगे। विपक्षी क्रम 2 ने भी रॉक फॉस्फेट मजदूर संघ से दिनांक 26.05.1981 को एक समझौता किया, जिसमें विपक्षी क्रम 2 ने समान कार्य, समान वेतन के सिद्धान्त के आधार पर समान वेतन देना स्वीकार किया।</p> <p>विपक्षी क्रम 2 ने दिनांक 17.05.1985 को गुप्त रूप से भारत सरकार के समक्ष एक प्रार्थना पत्र प्रस्तुत कर 17 श्रमिकों की दिनांक 17.08.85 से छंटनी करने की स्वीकृति मांगी और शेष 120 श्रमिकों को भी उसी प्रकार के दिनांक 30.06.1985 को, दिनांक 01.08.1985 से छंटनी करने के नोटिस दिए। विपक्षी क्रम 2 ने उक्त नोटिसों में श्रमिकों की छंटनी का कारण विपक्षी क्रम 1 के ठेके का कार्य समाप्त होना बताया। विपक्षी क्रम 2 द्वारा छंटनी की स्वीकृति हेतु प्रेषित पत्र भारत सरकार के समक्ष विचाराधीन थे, उसी दौरान सभी 137 श्रमिकों</p>			
105.	यशपाल सिंह	ट्रिप काउन्टर	21.09.1983				
106.	चान्द किशोर	-	13.09.1983				
107.	मदन वशिष्ठ	-	11.10.1983				
108.	भूपेन्द्र सिंह	-	05.11.1983				
109.	पी.वी. जेकब	ट्रिप ड्राइवर	24.05.1981				
110.	हरेन्द्र सिंह	-	19.06.1981				
111.	थन्काचन	-	08.07.1981				
112.	शिवदासन	-	12.07.1981				
113.	तारकेश्वर सिंह	-	09.08.1981				
114.	गुलाब रावत	-	18.08.1981				
115.	जवान सिंह	-	22.05.1981				
116.	सफी मौहम्मद	-	25.05.1981				
117.	दिनेश बाजपाई	-	04.09.1981				
118.	केरिंग लाल	-	15.09.1981				
119.	नर्वे सिंह	-	18.09.1981				
120.	प्रताप सिंह	-	18.09.1981				
121.	समसुद्धीन	-	18.09.1981				
122.	औमकार सिंह	-	20.09.1981				
123.	मनोहर लाल रावत	-	20.09.1981				
124.	शंकर लाल आहीरी	-	20.09.1981				
125.	डी.टी. दास	-	10.10.1981				
126.	भंवर दास	-	20.10.1981				
127.	उमाशंकर	-	20.01.1981				
128.	दौलत सिंह	-	01.12.1981				
129.	सीताराम साधू	-	01.12.1981				

की सेवाएं अवैध और अनुचित तरीके से समाप्त करने का मार्ग अपनाया गया। इन श्रमिकों की सेवाएं समाप्त करने से पूर्व मान्यताप्राप्त यूनियन रॉक फॉस्फेट मजदूर संघ को विश्वास में नहीं लिया गया, और अपनी मर्जी के 5 कर्मचारियों से जो विपक्षी क्रम 2 के विश्वासपात्र थे, दिनांक 26.07.1985 को एक समझौता कर लिया। यह समझौता श्रमिकों के हितों के विपरीत एवं बदनियतिपूर्ण है, और अनुचित श्रम व्यवहार (Unfair Labour Practice) की कार्यवाही में आता है, जो अवैध है।

प्रार्थी संघ ने दिनांक 25.07.1985 को सहायक श्रम आयुक्त अजमेर को तार देकर औद्योगिक विवाद प्रस्तुत कर श्रमिकों की छंटनी रोकने की मांग की, परन्तु सहायक श्रम आयुक्त, अजमेर ने इस पर कोई कार्यवाही नहीं की और विपक्षी क्रम 2 ने समस्त 137 श्रमिकों की दिनांक 30.07.1985 को, सेवा से छंटनी कर दी। संघ ने उक्त विवाद को केन्द्रीय सहायक श्रम आयुक्त, अजमेर के समक्ष उठाया, और उसमें समझौता नहीं होने पर केन्द्रीय सरकार ने यह विवाद इस न्यायाधिकरण को प्रेषित किया है।

प्रार्थी संघ का यह भी अभिकथन है कि श्रमिकों की छंटनी का जो कारण बताया गया है, वह पूर्णतः गलत और आधारहीन है। जुलाई, 1985 में विपक्षी क्रम 2 का ठेके का कार्य समाप्त नहीं हुआ था, और वह 100 नए श्रमिकों की नियुक्ति कर चलाया जा रहा है। पांच श्रमिकों द्वारा किया गया समझौता अवैध है। विपक्षी क्रम 2 ने समझौते के सभी कागज स्वयं तैयार करवाकर, डरा धमकाकर, उन पर श्रमिकों के हस्ताक्षर करवा लिए। उक्त 5 श्रमिकों को, श्रमिकों ने स्वेच्छा से अपना प्रतिनिधि नहीं बनाया और ना ही उन्हें समझौते का अधिकार दिया। इन पांच श्रमिकों ने भी श्रमिकों की सभा बुलाकर समझौते की स्वीकृति नहीं ली। वास्तविकता में विपक्षी क्रम 2 ने उक्त 137 श्रमिकों को ग्रेच्यूटी आदि के लाभ से वंचित करने की बदनियति से श्रमिक विरोधी समझौता, अपने कठपुतली श्रमिकों के नाम से कर लिया, जो बदनियतिपूर्ण है। यह छंटनी अनुचित श्रम व्यवहार में आती है, इस कारण 137 श्रमिकों की छंटनी को अवैध और अनुचित घोषित किया जावे, और सभी श्रमिकों को पूरे वेतन व सुविधाओं सहित सेवा में बहाल किया जावे।

विपक्षी क्रम 1 मैसर्स राजस्थान स्टेट माइन्स एण्ड मिनरल्स लि. उदयपुर ने प्रार्थी संघ के स्टेटमेंट ऑफ क्लेम का उत्तर प्रस्तुत कर विरोध किया। उनका उत्तर में यह अभिकथन है कि झामर कोटडा खदानों पर कार्य करने वाले श्रमिकों का प्रार्थी संघ के सदस्य होना स्वीकार नहीं है। विपक्षी क्रम 1 के संस्थान झामर कोटडा में, रॉक फॉस्फेट मजदूर संघ, एक मात्र श्रमिकों का संगठन है और वही संस्थान और खदानों में कार्यरत श्रमिकों से संबंधित है। मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज, उदयपुर के संस्थान में भी प्रार्थी संघ का अस्तित्व नहीं है, इसलिए उसे श्रमिकों की ओर से वाद प्रस्तुत करने का अधिकार नहीं है।

विपक्षी क्रम 1 के उत्तर में यह भी अभिकथन है कि विपक्षी क्रम 1 राज्य सरकार का संस्थान है, और झामर कोटडा की खानें उन्हीं के पास हैं। विपक्षी क्रम 2 को विपक्षी क्रम 1 ने खानों से उत्पादित ऊपरी संस्तर (Over burden) को हटाने का ठेका दिया

हुआ है। यह कार्य हमेशा नहीं होता है, कभी-कभी, ऊपरी संस्तर जमा होने पर ही, करवाया जाता है और जितना माल हटाते हैं, उसी अनुसार भुगतान किया जाता है। विपक्षी क्रम 1 की विपक्षी क्रम 2 के साथ श्रमिक उपलब्ध करवाने की सविदा नहीं है, बल्कि विपक्षी क्रम 2 द्वारा किए गए कार्य के आधार पर भुगतान किया जाता है। कार्य हेतु मशीनें, मजदूर और व्यक्ति विपक्षी क्रम 2 द्वारा ही लगाए जाते हैं, और इसका विपक्षी क्रम 1 से संबंध नहीं है। विपक्षी क्रम 2 के पास कार्य करने वाले कर्मचारियों पर विपक्षी क्रम 1 का कोई नियंत्रण नहीं है। विपक्षी क्रम 2 अपनी आवश्यकता के अनुसार श्रमिक लगाता है, और उनका विपक्षी क्रम 1 से संबंध नहीं है।

विपक्षी क्रम 1 का यह भी अभिकथन है कि दिनांक 19.05.1981 को कोई समझौता विपक्षी क्रम 1 और मान्यता प्राप्त यूनियन के बीच नहीं हुआ। वास्तविकता में रॉक फॉस्फेट मजदूर संघ और विपक्षी क्रम 1 के प्रबन्धकों के प्रतिनिधियों के मध्य दिनांक 19.05.1981 को जो वार्ता हुई, उसका विवरण-कार्यवृत्त (Minutes) इस दस्तावेज में दिया गया है, परन्तु इसे बाद में किए गए किसी भी समझौते का भाग नहीं बनाया गया है एवं इसकी कभी भी पालना नहीं की गई। दिनांक 19.05.1981 या इससे पूर्व विपक्षी क्रम 2 को ठेका नहीं दिया गया था, बल्कि यह निर्णय लिया गया था कि जमा व ऊपरी संस्तर ठेकेदार के माध्यम से दूर करवाया जावेगा और यूनियन के दबाव डालने पर कम्पनी ने सिर्फ यह माना था कि ठेका पूर्ण होने के बाद अगर कोई श्रमिक बेरोजगार हो जाता है तो उसे प्राथमिकता दी जावेगी, लेकिन प्राथमिकता का तात्पर्य नियुक्ति देने से नहीं है। विपक्षी क्रम 1 के यहां नियुक्ति की निश्चित प्रक्रिया है, उसी के अनुसार भर्ती की जाती है। दिनांक 19.05.1981 के कार्यवृत्त का असर उसी परिस्थिति में हो सकता था जब ठेका समाप्त हो जावे, परन्तु ठेका चालू है।

विपक्षी क्रम 1 ने अपने उत्तर में रॉक फॉस्फेट मजदूर संघ और विपक्षी क्रम 2 के मध्य हुए किसी भी प्रकार के समझौते की जानकारी होने से इन्कार करते हुए अभिकथित किया है कि ऐसे किसी समझौते से विपक्षी क्रम 1 बाध्य नहीं है। उसका यह भी अभिकथन है कि दिनांक 26.07.1985 का समझौता एक त्रिपक्षीय समझौता था, और उसे श्रमिकों के 5 प्रतिनिधियों ने किया था। यह समझौता, समझौता-अधिकारी के समक्ष विवाद के निपटारे के लिए किया गया था और इसकी वैधता और अवैधता के बारे में कोई निर्देश (रैफरेंस) न्यायाधिकरण के समक्ष निर्णायक नहीं हैं। इस कारण इस बिन्दु पर वर्तमान निर्देश के परिप्रेक्ष्य में विचार नहीं किया जा सकता।

विपक्षी क्रम 1 यह भी अभिकथन है कि श्रमिकों की जो छंटनी बताई गई है, उससे संबंधित पत्रावली पर प्रस्तुत लेख पत्रों से यह प्रकट होता है कि यह सेवा पर्यावसान समझौते के आधार पर किया गया है और समझौते की पालना और उसकी सूचना नियमानुसार दी गई है। नए श्रमिकों की भर्ती के बारे में तथ्य गलत है। प्रपत्र दिनांक 19.05.1981 के अनुसार भी प्राथमिकता का प्रश्न ठेका समाप्त होने पर ही उत्पन्न होता है, और विपक्षी क्रम 1 की अगर कोई जिम्मेदारी होती भी है तो वह सविदा समाप्त होने के बाद श्रमिकों के बेरोजगार होने पर, प्राथमिकता देने तक ही सीमित है।

विपक्षी क्रम 1 का यह भी अभिकथन है कि उसे प्रकरण में गलत पक्षकार बनाया गया है, दर्शाए गए व्यक्ति विपक्षी क्रम 1 के श्रमिक नहीं हैं और वह उनका नियोजक नहीं है; 137 श्रमिकों को विपक्षी क्रम 1 द्वारा कार्य नहीं देने के संबंध में कोई निर्देश न्यायाधिकरण के समक्ष नहीं है।

उनका यह भी अभिकथन है कि यह मामला कॉन्ट्रैक्ट लेबर (रेग्युलेशन एण्ड एबॉलिशन) एक्ट, 1970 के प्रावधानों के अन्तर्गत आता है। अतः औद्योगिक विवाद अधिनियम के अन्तर्गत इसका निर्देश नहीं भिजवाया जा सकता। उनका यह भी अभिकथन है कि कॉन्ट्रैक्ट लेबर (रेग्युलेशन एण्ड एबॉलिशन) एक्ट, 1970 के अधिनियम के अन्तर्गत विपक्षी क्रम 1 पंजीकृत तथा विपक्षी क्रम 2 ठेकेदार भी लाईसेंस धारक है। ऐसी स्थिति में विपक्षी क्रम 1 की कोई जिम्मेदारी विपक्षी क्रम 2 के श्रमिकों के लिए नहीं होती है। विपक्षी क्रम 1 का यह भी अभिकथन है कि प्रार्थी ने यह भी नहीं बताया है कि किस-किस श्रमिक ने कितने-कितने दिन कार्य किया है और इन तथ्यों के अभाव में छंटनी के संबंध में समुचित उत्तर नहीं दिया जा सकता। अतः सम्पूर्ण विवाद पर विचार कर प्रार्थी का क्लेम निरस्त कर समुचित सरकार को रैफरेंस पत्र भिजवाया जावे।

विपक्षी क्रम 2 ने प्रार्थी के स्टेटमेंट ऑफ क्लेम का जवाब प्रस्तुत कर अभिकथित किया है कि विपक्षी क्रम 2 को विपक्षी क्रम 1 ने खानों से उत्पादित संस्तर को हटाने का ठेका दिया था, जिसकी अवधि समय-समय पर बढ़ाई गई। अप्रार्थी क्रम 2 के कार्य की प्रकृति को देखते हुए रॉक फॉस्फेट मजदूर संघ जो विपक्षी क्रम 1 के श्रमिकों की मान्यता प्राप्त यूनियन थी, के साथ विपक्षी क्रम 2 ने दिनांक 26.05.1981 को समझौता किया। उसके बाद भी कई समझौते किए गए, जिसके अनुसार संविदा और ठेके के कार्य दिनांक 30.09.1985 तक समाप्त होना था। विपक्षी क्रम 2 ने रॉक फॉस्फेट मजदूर संघ के साथ समझौता दिनांक 25.02.1985 को किया, जिसमें यह स्पष्ट किया गया कि श्रमिकों का नियोजन निश्चित अवधि के लिए है, जो कि संविदा की अवधि है। दिनांक 17.05.1985 और 02.07.1985 को विपक्षी क्रम 2 ने धारा 25 एन औद्योगिक विवाद अधिनियम के अन्तर्गत प्रार्थना पत्र भिजवाया था, जो केन्द्र सरकार के पास लम्बित था। इसी दौरान श्रमिकों ने कुछ शर्तों पर स्वैच्छिक सेवानिवृत्ति हेतु प्रार्थना पत्र दिए, जिस पर अधिकांश श्रमिकों ने हस्ताक्षर किए थे। इस प्रार्थना पत्र के प्राप्त होने पर विपक्षी क्रम 2 को, पुनर्विचार करने पर, यह आभास हुआ कि पूर्व में दिए गए प्रार्थना पत्र दिनांक 17.05.1985 और 02.07.1985 को Persue करने की आवश्यकता नहीं है। प्रबन्धन, उक्त श्रमिकों के स्वैच्छिक सेवानिवृत्ति के प्रार्थना पत्र में चाहे गए लाभ देने पर सहमत हो गया और इस संबंध में समझौता सुलह अधिकारी, केन्द्रीय के समक्ष दिनांक 26.07.1985 को एक त्रिपक्षीय सुलह-समझौता हुआ। इस समझौते और दिनांक 25.02.1985 के समझौते के बाद श्रमिकों एवं विपक्षी क्रम 2 के बीच किसी प्रकार का विवाद शेष नहीं रहा। दिनांक 26.07.1985 के समझौते को मान्यता प्राप्त यूनियन ने और 137 श्रमिकों ने सहर्ष स्वीकार किया और इस समझौते के अन्तर्गत सभी ने आर्थिक लाभ प्राप्त किए। समझौता दिनांक 26.07.1985 पर उन पांच

व्यक्तियों ने हस्ताक्षर किए, जिन्हें पूर्व में वर्ष 1983 में विशेष मिटिंग करके प्राधिकृत प्रतिनिधि के रूप में विपक्षी क्रम 2 के साथ वार्ता आदि करने के लिए चुना गया था।

विपक्षी क्रम 2 का यह भी अभिकथन है कि दिनांक 26.07.1985 के इस समझौते के पश्चात् प्रार्थी यूनियन ने दिनांक 29.11.1985 को एक मांग पत्र रखा, जिस पर विपक्षी क्रम 1 एवं विपक्षी क्रम 2 को सहायक लेबर कमिशनर सेन्ट्रल, अजमेर द्वारा टिप्पणी हेतु बुलाया गया। विपक्षी क्रम 2 ने समझौता अधिकारी के समक्ष विस्तृत टिप्पणियां पेश की और समझौता प्रक्रिया में भाग लिया। इस समझौता प्रक्रिया की असफलता के प्रतिवेदन से यह स्पष्ट है कि प्रार्थी यूनियन को विपक्षी क्रम 2 के विरुद्ध यही शिकायत है कि दिनांक 26.07.1985 का समझौता केवल पांच प्राधिकृत प्रतिनिधियों द्वारा हस्ताक्षरित किया गया तथा रॉक फॉस्फेट मजदूर संघ के पदाधिकारियों द्वारा हस्ताक्षरित नहीं किया गया। यह आपत्ति सारहीन है, क्योंकि उक्त समझौते को रॉक फॉस्फेट मजदूर संघ के पत्र दिनांक 06.08.1985 द्वारा स्वीकार कर लिया गया। दिनांक 26.07.1985 के समझौते के संबंध में प्रार्थी यूनियन और विपक्षी क्रम 2 के मध्य कोई विवाद नहीं है।

विपक्षी क्रम 2 का अभिकथन है कि श्रमिकों का नियोजन निश्चित अवधि के लिए होने और तत्पश्चात् उनके द्वारा सुलह-समझौते के अन्तर्गत लाभ प्राप्त करने के कारण सम्पूर्ण मामला धारा 2 (oo) के (a) व (bb) औद्योगिक विवाद अधिनियम के अन्तर्गत आ जाता है।

विपक्षी क्रम 2 का यह भी अभिकथन है कि प्रार्थी यूनियन को मामला उठाने का कोई अधिकार नहीं है।

विपक्षी क्रम 2 ने अपने जवाब में विपक्षी क्रम 1 द्वारा खानों से उत्पादित माल को हटाने का कार्य ठेके पर दिया जाना स्वीकार किया है और यह अभिकथित किया है कि उन्हें यह कार्य लिखित संविदा से दिया गया था। विपक्षी क्रम 2 ने ठेके पर लिए गए कार्य को सम्पन्न करने के लिए उसके द्वारा श्रमिकों को नियोजित किए जाने के तथ्य से इन्कार नहीं किया और रॉक फॉस्फेट मजदूर संघ से विपक्षी क्रम 1 का दिनांक 19.05.1981 को किए जाने वाले समझौते को भी विवादित नहीं किया। विपक्षी क्रम 2 ने दिनांक 26.05.1981 को विपक्षी क्रम 2 और रॉक फॉस्फेट मजदूर संघ के बीच समझौते को भी विवादित नहीं होना प्रकट किया है और यह भी अभिकथित किया है कि वर्ष 1983 में इस संविदा के कार्य से संबंधित पांच श्रमिकों को अन्य श्रमिकों द्वारा वार्तालाप करने के लिए प्राधिकृत प्रतिनिधि बनाया गया। उक्त पांच व्यक्ति मान्यता प्राप्त यूनियन रॉक फॉस्फेट मजदूर संघ के भी सदस्य थे। बाद में दिनांक 25.02.1985 को समझौता लिखा गया। विपक्षी क्रम 2 का अभिकथन है कि उन्होंने कोई भी कार्यवाही भारत सरकार के समक्ष गुप्त तौर पर नहीं की। भारत सरकार के समक्ष छंटनी की स्वीकृति के लिए जो प्रार्थना पत्र पेश किए गए थे, वे अज्ञानतावश प्रस्तुत कर दिए गए थे।

विपक्षी क्रम 2 ने अपने उत्तर में प्रार्थी के इस अभिकथन को सर्वथा गलत बताया है कि उन्होंने 137 श्रमिकों को अवैध और

अनुचित तरीके से सेवा मुक्त कर दिया और दिनांक 26.07.1985 का समझौता बदलियतिपूर्वक किया गया। उनका अभिकथन है कि दिनांक 26.07.1985 का समझौता रॉक फॉस्फेट मजदूर संघ को विश्वास में लेकर किया गया था। उनके विरुद्ध अन्याय, बदलियति और श्रमिक विरोधी होने के जो आरोप लगाए गए हैं, वे मिथ्या हैं। उनका अभिकथन है कि विपक्षी क्रम 2 ने 137 श्रमिकों की छंटनी नहीं की, बल्कि सुलह-समझौते दिनांक 26.07.1985 के अन्तर्गत श्रमिकों ने स्वैच्छिक निवृत्ति लेकर आर्थिक लाभ प्राप्त किए हैं। इन श्रमिकों को नियोजन में किसी प्रकार की कोई प्राथमिकता दिए जाने का प्रश्न है, तो वह विपक्षी क्रम 1 से संबंधित है, विपक्षी क्रम 2 से संबंधित नहीं है। श्रमिकों से किन्हीं भी कागजों पर धमकी और दबाव देकर हस्ताक्षर नहीं करवाए गए। प्रार्थी कोई अनुतोष प्राप्त करने के अधिकारी नहीं हैं।

प्रार्थी ने विपक्षी क्रम 1 के उत्तर का प्रतिउत्तर प्रस्तुत करते हुए यह अभिकथित किया है कि विपक्षी ने रॉक फॉस्फेट मजदूर संघ को गलत व राजनैतिक आधार पर मान्यता दे रखी है; दिनांक 19.05.1981 का समझौता, सेटलमेंट की परिभाषा में आता है। विपक्षी क्रम 1 ने विपक्षी क्रम 2 का ठेका समाप्त नहीं किया, फिर भी विपक्षी क्रम 2 ने विपक्षी क्रम 1 को इन श्रमिकों को कार्य पर लेने के लिए बाध्य नहीं किया, जबकि विपक्षी क्रम 1 को इन श्रमिकों को समझौते के अनुसार कार्य पर लेकर, नियोजन देना चाहिए था। समझौते के आधार पर सेवा पर्यावसान की बात मिथ्या है। उक्त विवाद सेवा-मुक्ति का विवाद है और औद्योगिक विवाद अधिनियम के अन्तर्गत आता है। विपक्षी क्रम 1 मुख्य नियोजक है और समझौता दिनांक 19.05.1981 के आधार पर उनका भी दायित्व है।

प्रतिउत्तर में प्रार्थी का यह भी कथन रहा है कि विवाद से संबंधित 137 श्रमिकों ने एक वर्ष से अधिक कार्य किया है और एक वर्ष की अवधि में 240 दिन से अधिक कार्य किया है।

प्रार्थी ने विपक्षी क्रम 2 के उत्तर का भी प्रतिउत्तर प्रस्तुत किया है और यह अभिकथित किया है कि प्रतिउत्तर विपक्षी क्रम 2 का ठेके का कार्य मई 1981 से 1991 तक लगातार चलता रहा है। उन्होंने विपक्षी क्रम 2 और रॉक फॉस्फेट मजदूर संघ के मध्य दिनांक 26.05.1981 का समझौता होना स्वीकार किया और अभिकथित किया है कि विपक्षी क्रम 2 ने ठेके की अवधि बढ़ाने पर अपने यहां कार्यरत श्रमिकों को नियोजन देते रहने का कार्य नहीं किया और 137 श्रमिकों को अवैध रूप से सेवा मुक्त कर दिया।

प्रार्थी का यह भी अभिकथन है कि विपक्षी क्रम 2 और रॉक फॉस्फेट मजदूर संघ के बीच दिनांक 25.02.1985 को जो समझौता हुआ था, उसके मुताबिक विपक्षी क्रम 2 को ठेके की अवधि तक श्रमिकों को नियोजन में रखना चाहिए था। विपक्षी क्रम 2 का ठेका सितम्बर, 1985 में समाप्त नहीं हुआ और लगातार चलता रहा। विपक्षी क्रम 2 ने श्रमिकों को नियुक्ति पत्र नहीं दिए और उनकी सेवाएं निश्चित अवधि के लिए होने की बात कहना गलत है।

प्रार्थी का अभिकथन है कि विपक्षी क्रम 2 ने ठेके की अवधि समाप्त होने के नाम पर श्रमिकों की छंटनी के नोटिस दिए, उन पर

दबाव डाला कि उनके द्वारा प्रार्थना पत्र प्रस्तुत करने पर अधिक पैसा मिलेगा; ऐसी स्थिति त्याग पत्र से छोड़ी गई सेवाएं भी छंटनी की परिभाषा में आती हैं। समझौता दिनांक 26.07.1985 कानून के विपरीत है और प्रभावहीन है। इसकी वार्ता करने वाले पांच श्रमिकों का चुनाव वर्ष 1983 में किया गया, जबकि वर्तमान विवाद मई, 1985 में उत्पन्न हुआ है। यह समझौता विपक्षी क्रम 2, पांच श्रमिकों और सहायक लेबर कमिशनर केन्द्रीय की मिलीभगत का षड्यंत्र है। विपक्षी क्रम 2 द्वारा निकाले गए श्रमिकों में से अधिकांश उनकी यूनियन के सदस्य हैं। वर्ष 1983 में चुने गए पांच श्रमिकों को केवल वार्ता में भाग लेने के लिए चुना गया था, उन्हें समझौते का अधिकार नहीं था। विपक्षी क्रम 2 ने 137 श्रमिकों की छंटनी की है और सेवा-मुक्ति छंटनी की परिभाषा में आती है और यह छंटनी बिना आधार उत्पन्न हुए की गई है, इस कारण अवैध है।

पक्षकारों की ओर से उक्त प्रस्तुत स्टेटमेंट ऑफ क्लेम, जवाब और प्रतिउत्तरों के आधार पर न्यायाधिकरण ने भिजवाए गए निर्देश को निर्णीत करने के लिए निम्न विवाद बिन्दु निर्धारित किए हैं -

1. क्या विवादग्रस्त श्रमिकों की नियुक्ति राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के यहां उनके अधीन एवं नियंत्रण में उन्हीं के कार्य एवं उत्पादन के लिए की गई थी?
2. क्या राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर ही श्रमिकों के मुख्य नियोजक थे?
3. क्या विवादग्रस्त श्रमिकों की सेवा मुक्ति करने से पूर्व सरकार से अनुमति ली गई तथा 25 एफ औद्योगिक विवाद अधिनियम, 1947 की पालना नहीं की गई?
4. क्या प्रार्थी संघ ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के श्रमिकों का एक संघ है, और उसे ईस्टर्न इंजीनियरिंग के श्रमिकों की ओर से वाद उठाने का अधिकार प्राप्त है?
5. क्या दिनांक 19.05.1981 को यूनियन व विपक्षी नम्बर 1 के बीच समझौता किया, अगर ऐसा है तो उसका विवाद पर क्या असर है?
6. क्या दिनांक 26.05.1981 का समझौता किया गया, अगर ऐसा है तो इसका क्या प्रभाव है?
7. क्या विपक्षी नम्बर 2 ने श्रमिकों को निश्चित समय के लिए सेवा में लिया था, और यह सेवा की शर्त थी?
8. क्या श्रमिकों ने स्वैच्छिक निवृत्ति ली है, और उनकी कोई छंटनी नहीं की गई है?
9. क्या निर्देश में दर्शाए गए श्रमिक विपक्षी नम्बर 1 के श्रमिक हैं, और वह किसी प्रकार की सुविधा या अन्य पारितोष पाने के अधिकारी हैं?
10. क्या विपक्षी नम्बर 1 की, यदि श्रमिक विपक्षी नम्बर 2 के पाए जाएं तो कोई जिम्मेदारी है?
11. क्या प्रार्थी यूनियन को समझौते की वैधता को चुनौती देने का अधिकार नहीं है?

12. क्या ठेकेदार विपक्षी नम्बर 2 द्वारा नियोजित श्रमिकों के संबंध में विवाद औद्योगिक विवाद की परिभाषा में आता है व ऐसा विवाद धारा 10 औद्योगिक विवाद अधिनियम के अन्तर्गत चलने योग्य है ?

प्रार्थी संघ की ओर से प्रकरण में सर्व श्री महेन्द्र सिंह खमेसरा, प्रार्थी संघ के अध्यक्ष के साथ-साथ श्रमिक नाथू, चैना, रमजान बेग, औंकार सिंह, टंगचन्द पी.के., अब्दुल रहमान, मोती, शंकर, फकीर मौहम्मद, बलीस्तर, भैरा, करिंग लाल, दौलत सिंह, दलीचन्द, लक्ष्मण सिंह, शक्का, उमेश सिंह, कालूराम, हनीफ मौहम्मद, लिम्बा, मांगीलाल, उदयलाल, मनोहर लाल के शपथ पत्र पेश किए गए, जिनसे अप्रार्थीगण के विद्वान प्रतिनिधि ने जिरह की है। इनके अलावा सर्व श्री भूपेन्द्र सिंह, तोला व लालूराम के शपथ पत्र भी पेश हुए हैं, लेकिन उक्त श्रमिकगण जिरह के लिए उपस्थित नहीं हुए, जिनसे

अप्रार्थीगण के विद्वान प्रतिनिधि को जिरह का अवसर नहीं मिला। उक्त साक्षीगण के अतिरिक्त शपथ पत्र भी बाद में प्रस्तुत किए गए, जिनके संबंध में विपक्षी क्रम 1 की आपत्ति ग्राह्यता के संबंध में है, जिस पर इस निर्णय में ही न्यायाधिकरण को आदेश देना है।

विपक्षी क्रम 1 की ओर से प्रकरण में साक्षीगण के.सी. बोले, आर.के. मेहता, सज्जन सिंह शक्तावत एवं एल.एल. चण्डालिया के शपथ पत्र पेश हुए। साक्षी के.सी. बोले के उपस्थित नहीं होने के कारण उससे जिरह नहीं की जा सकी।

प्रार्थी श्रमिकगण की ओर से प्रलेखीय साक्ष्य में प्रलेख दिनांक 19.05.1981 प्रदर्श डब्ल्यू-1 प्रदर्शित करवाया गया। विपक्षी संस्थान की ओर से दस्तावेज प्रदर्श एम 1 लगायत प्रदर्श एम 92 प्रदर्शित करवाए गए, जो निम्नानुसार हैं -

- Ex. M-1 नियुक्ति आदेश मनोहर लाल रावत दिनांक 10.09.1981
- Ex. M-2/1 मनोहर लाल रावत द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
- Ex. M-2/2 प्रतिनिधियों का चयन बाबत पत्र दिनांक 15.03.1983
- Ex. M-3 मनोहर लाल रावत का पी.एफ. खाते का सेटलमेंट
- Ex. M-4 मनोहर लाल रावत के पी.एफ. भुगतान की प्राप्ति रसीद
- Ex. M-5 नियुक्ति आदेश उमेश सिंह दिनांक 13.06.1982
- Ex. M-6 शपथ पत्र उम्मेद सिंह
- Ex. M-7 पी.एफ. भुगतान की प्राप्ति रसीद उमेश सिंह दिनांक 30.07.1985
- Ex. M-8 पी.एफ. खाते का सेटलमेंट उमेश सिंह
- Ex. M-9 उमेश सिंह द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
- Ex. M-10 उमेश सिंह का डेविट वाउचर दिनांक 30.07.1985
- Ex. M-11 नियुक्ति आदेश लिम्बा रावत दिनांक 29.04.1983
- Ex. M-12 लिम्बा रावत द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
- Ex. M-13 पी.एफ. खाते का सेटलमेंट लिम्बा रावत
- Ex. M-14 लिम्बा रावत का डेविट वाउचर दिनांक 30.07.1985
- Ex. M-15 झंकाचन का डेविट वाउचर दिनांक 30.07.1985
- Ex. M-16 नियुक्ति आदेश रमजान बेग दिनांक 01.10.1981
- Ex. M-17 रमजान बेग द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985

—शपथ पत्र लिम्बा

- Ex. M-18 पी.एफ. खाते का सेटलमेंट रमजान बेग
- Ex. M-19 पी.एफ. भुगतान की प्राप्ति रसीद रमजान बेग दिनांक 30.07.1985
- Ex. M-20 रमजान बेग का डेविट वाउचर
- Ex. M-22 नियुक्ति आदेश नाथू देव रावत दिनांक 29.04.1983
- Ex. M-23 नाथू देव रावत द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
- Ex. M-24 नाथू देव रावत का डेविट वाउचर
- Ex. M-25 पी.एफ. भुगतान की प्राप्ति रसीद नाथू देव रावत दिनांक 30.07.1985
- Ex. M-26 पी.एफ. खाते का सेटलमेंट नाथू देव रावत
- Ex. M-27 नियुक्ति आदेश मोती मीणा दिनांक 20.08.1982
- Ex. M-28 मोती मीणा द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र
- Ex. M-29 पी.एफ. भुगतान की प्राप्ति रसीद मोती मीणा दिनांक 30.07.1985
- Ex. M-30 पी.एफ. खाते का सेटलमेंट मोती मीणा
- Ex. M-31 मोती मीणा का डेविट वाउचर
- Ex. M-32 नियुक्ति आदेश शंकर मीणा दिनांक 20.08.1982
- Ex. M-33 शंकर मीणा द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
- Ex. M-34 पी.एफ. खाते का सेटलमेंट शंकर मीणा
- Ex. M-35 पी.एफ. भुगतान की प्राप्ति रसीद शंकर मीणा दिनांक 30.07.1985
- Ex. M-36 शंकर मीणा का डेविट वाउचर
- Ex. M-37 नियुक्ति आदेश चैना मीणा दिनांक 20.08.1982
- Ex. M-38 चैना मीणा द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
- Ex. M-39 पी.एफ. खाते का सेटलमेंट चैना मीणा
- Ex. M-40 पी.एफ. भुगतान की प्राप्ति रसीद चैना मीणा दिनांक 30.07.1985
- Ex. M-41 चैना मीणा का डेविट वाउचर
- Ex. M-42 उदय लाल द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
- Ex. M-43 उदय लाल का डेविट वाउचर
- Ex. M-44 उदय लाल का शपथ पत्र
- Ex. M-45 नियुक्ति आदेश कालूराम रावत दिनांक 11.08.1981
- Ex. M-46 पी.एफ. खाते का सेटलमेंट कालूराम
- Ex. M-47 पी.एफ. भुगतान की प्राप्ति रसीद कालूराम रावत दिनांक 30.07.1985

Ex. M-48	कालूराम रावत का डेविट वाउचर
Ex. M-49	नियुक्ति आदेश हनीफ मौहम्मद दिनांक 01.11.1981
Ex. M-50	पी.एफ. भुगतान की प्राप्ति रसीद मौहम्मद हनीफ उर्फ हनीफ मौहम्मद दिनांक 30.07.1985
Ex. M-51	पी.एफ. खाते का सेटलमेंट मौहम्मद हनीफ
Ex. M-52	मौहम्मद हनीफ द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
Ex. M-53	मौहम्मद हनीफ का डेविट वाउचर
Ex. M-54	नियुक्ति आदेश शाका दिनांक 13.06.1982
Ex. M-55	पी.एफ. खाते का सेटलमेंट शाका
Ex. M-56	शाका द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
Ex. M-57	पी.एफ. भुगतान की प्राप्ति रसीद शाका दिनांक 30.07.1985
Ex. M-58	शाका का डेविट वाउचर
Ex. M-59	स्टेटमेंट ऑफ क्लेम
Ex. M-60	नियुक्ति आदेश मांगी लाल टेलर दिनांक 16.09.1981
Ex. M-61	मांगी लाल टेलर का शपथ पत्र
Ex. M-62	पी.एफ. भुगतान की प्राप्ति रसीद मांगी लाल टेलर दिनांक 31.07.1985
Ex. M-63	पी.एफ. खाते का सेटलमेंट मांगी लाल टेलर
Ex. M-64	मांगी लाल टेलर द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 20.07.1985
Ex. M-65	मांगी लाल टेलर का डेविट वाउचर दिनांक 30.07.1985
Ex. M-66	नियुक्ति आदेश औंकार सिंह दिनांक 10.09.1981
Ex. M-67	पी.एफ. खाते का सेटलमेंट औंकार सिंह
Ex. M-68	औंकार सिंह का डेविट वाउचर दिनांक 30.07.1985
Ex. M-70	लक्ष्मण सिंह का डेविट वाउचर दिनांक 30.07.1985
Ex. M-71	नियुक्ति आदेश झनका चन
Ex. M-72	पी.एफ. खाते का सेटलमेंट झनका चन
Ex. M-73	पी.एफ. खाते का सेटलमेंट अब्दुल रहमान
Ex. M-74	पी.एफ. भुगतान की प्राप्ति रसीद अब्दुल रहमान दिनांक 30.07.1985
Ex. M-75	अब्दुल रहमान टेलर का शपथ पत्र
Ex. M-76	अब्दुल रहमान का डेविट वाउचर दिनांक 30.07.1985
Ex. M-77	नियुक्ति आदेश अब्दुल रहमान दिनांक 01.06.1983

- Ex. M-78 अब्दुल रहमान टेलर द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
- Ex. M-79 नियुक्ति आदेश केरिंग लाल दिनांक 10.09.1983
- Ex. M-80 पी.एफ. खाते का सेटलमेंट केरिंग लाल
- Ex. M-81 पी.एफ. भुगतान की प्राप्ति रसीद केरिंग लाल दिनांक 30.07.1985
- Ex. M-82 केरिंग लाल द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
- Ex. M-83 केरिंग लाल का डेबिट वाउचर दिनांक 30.07.1985
- Ex. M-84 नियुक्ति आदेश दली चन्द दिनांक 11.09.1981
- Ex. M-85 दली चन्द टेलर का शपथ पत्र
- Ex. M-86 पी.एफ. भुगतान की प्राप्ति रसीद दली चन्द दिनांक 30.07.1985
- Ex. M-87 पी.एफ. खाते का सेटलमेंट दली चन्द
- Ex. M-88 दली चन्द द्वारा शर्त सहित स्वेच्छया से छटनी/सेवा से पृथक होने का प्रार्थना पत्र दिनांक 29.07.1985
- Ex. M-89 दली चन्द का डेबिट वाउचर दिनांक 30.07.1985
- Ex. M-90 सप्लीमेंट्री एग्रीमेंट दिनांक 31.01.1985
- Ex. M-91 मेमोरेण्डम ऑफ सेटलमेंट दिनांक 26.07.1985
- Ex. M-92 एग्रीमेंट दिनांक 14.05.1981

जिरह के दौरान विपक्षीगण द्वारा दस्तावेजात प्रदर्श डब्ल्यू-5/2 श्रमिक भैरा द्वारा संस्थान का दिया गया प्रार्थना पत्र, प्रदर्श डब्ल्यू-5/3 श्रमिक भैरा स्वेच्छिक सेवानिवृत्ति प्रार्थना पत्र, प्रदर्श डब्ल्यू-5/4 श्रमिक भैरा का डेबिट वाउचर, प्रदर्श डब्ल्यू-5/5 श्रमिक भैरा की भुगतान रसीद, प्रदर्श डब्ल्यू-6/1 श्रमिक बालिस्टर का नियुक्ति आदेश, प्रदर्श डब्ल्यू-6/3 श्रमिक बालिस्टर का डेबिट वाउचर, प्रदर्श डब्ल्यू-7/1 श्रमिक दौलत सिंह का नियुक्ति आदेश, प्रदर्श डब्ल्यू-7/4 श्रमिक दौलत सिंह स्वेच्छिक सेवानिवृत्ति प्रार्थना पत्र, प्रदर्श डब्ल्यू-7/5 श्रमिक दौलत सिंह द्वारा ट्रस्टी को दिया गया प्रार्थना पत्र, प्रदर्श डब्ल्यू-7/6 श्रमिक दौलत सिंह की भुगतान रसीद, प्रदर्श डब्ल्यू-7/7 श्रमिक दौलत सिंह का डेबिट वाउचर प्रदर्शित करवाए।

मैंने उभय पक्षकारों के विद्वान प्रतिनिधिगण के तर्क सुने तथा पत्रावली का ध्यानपूर्वक अध्ययन किया।

इस न्यायाधिकरण को केन्द्र सरकार द्वारा ऊपर वर्णित निर्देश निर्णयार्थ प्रेषित किया गया है। विधि का यह सुस्थापित सिद्धान्त है कि न्यायाधिकरण को उक्त रैफरेंस की सीमा तक ही अपना निष्कर्ष और निर्णय देना होता है। वर्तमान प्रकरण में जैसा कि ऊपर उल्लेख किया गया है कि पक्षकारों के अभिवचनों के आधार पर न्यायाधिकरण द्वारा विशेष आदेश पारित करके विवाद बिन्दु निर्धारित किए गए हैं। इन

विवाद बिन्दुओं के निष्कर्षों को भी हमें उक्त निर्देश के परिपेक्ष्य में ही देखना है।

विवादक संख्या 1, 2, 9 और 10 :-

विवादक संख्या 1, 2, 9 और 10 आपस में संबंधित हैं, और इनके संबंध में एक साथ विवेचन किया जाना उचित है। उक्त सभी विवादकों के मूल में यह है कि निर्देश में उल्लेखित श्रमिकगण विपक्षी क्रम 1 के नियोजन में थे अथवा विपक्षी क्रम 2 के नियोजन में और वे किस विपक्षी के श्रमिक थे।

इस संबंध में प्रार्थी के विद्वान प्रतिनिधि का यह तर्क है कि उक्त सभी श्रमिकों का वास्तविक नियोजक राजस्थान स्टेट माइन्स एण्ड मिनरल्स लि. उदयपुर, विपक्षी क्रम 1, था। विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज तो मात्र श्रमिक प्राप्त करने का माध्यम था। उनका तर्क है कि मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज वास्तव में राजस्थान स्टेट माइन्स एण्ड मिनरल्स लि. उदयपुर के एजेंट के रूप में कार्य कर रहा था। मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज का वही कार्य था, जो राजस्थान स्टेट माइन्स एण्ड मिनरल्स लि. उदयपुर का है। उनका तर्क है कि दिनांक 14.05.1981 के इकरारनामा प्रदर्श एम-92 के क्लॉज 6, 29, 33, 36, 45, 46, 50 और 57 से भी यह प्रकट होता है कि उक्त श्रमिक राजस्थान स्टेट माइन्स एण्ड

मिनरल लि. उदयपुर के ही नियोजन में थे। उनका यह भी तर्क है कि राजस्थान स्टेट माइन्स एण्ड मिनरल्स लि. उदयपुर और मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज दोनों ही कान्ट्रेक्ट लेबर एक्ट, 1970 के अन्तर्गत क्रमशः पंजीकृत और लाईसेंस धारक नहीं थे और इस कारण वास्तविकता में इस अधिनियम की धारा 7 और धारा 12 की पालना नहीं हुई है और समस्त श्रमिक मुख्य नियोजक राजस्थान स्टेट माइन्स एण्ड मिनरल्स लि. उदयपुर के ही श्रमिक माने जावेंगे।

उनका यह भी तर्क है कि प्रार्थी की ओर से प्रस्तुत साक्षीगण के कथन से भी यह प्रमाणित है कि वे राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के ही नियोजन में थे।

इसके विपरित विपक्षी क्रम 1 के विद्वान प्रतिनिधि का यह तर्क है कि प्रार्थी ने अपने स्टेटमेंट ऑफ क्लेम, जो कि अभिवचन की श्रेणी में आता है, में ही उक्त श्रमिकों का विपक्षी क्रम 2 के नियोजन में होना स्पष्टतः स्वीकार किया है और एक से अधिक स्थानों पर विपक्षी क्रम 2 को अपना नियोजक होना और विपक्षी क्रम 2 द्वारा ही सेवा पर्यावसान की कार्यवाही किया जाना प्रकट किया है। उनका यह भी तर्क है कि उनके द्वारा जवाब में इस संबंध में किए गए अभिवचनों को भी प्रार्थी की ओर से प्रतिउत्तर में खण्डित नहीं किया गया है। उनका तर्क है कि इकरारनामा दिनांक 14.05.1981 प्रदर्श एम-92 के क्लॉज 57 को पढ़ने से यह स्पष्टतः प्रमाणित है कि उक्त श्रमिक विपक्षी क्रम 2 के ही नियोजन में थे और उनके ही नियंत्रण और निर्देशन में कार्य करते थे। उनका तर्क है कि इस संबंध में प्रार्थी के साक्षीगण के जो कथन हैं, वे ग्राह्य नहीं हैं, क्योंकि ये उनके द्वारा किए गए अभिवचनों के विपरित हैं। उनका यह भी तर्क है कि यद्यपि साक्ष्य से यह प्रमाणित है कि राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर और मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज दोनों ही कान्ट्रेक्ट लेबर एक्ट 1970 के अन्तर्गत पंजीकृत और लाईसेंस धारक थे, परन्तु फिर भी तर्क की दृष्टि से यह माना जावे कि इस अधिनियम की धारा 7 व 12 की पालना नहीं हुई है तो भी इसका प्रभाव यह नहीं होगा कि उक्त श्रमिकगण को राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के कर्मकार, माना जावे। उक्त प्रावधानों के अपालन का केवल “दाण्डिक” प्रभाव है।

उनका यह भी तर्क है कि राजस्थान स्टेट माइन्स एण्ड मिनरल लि. व मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज का कार्य समान नहीं है। मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज का मात्र समय-समय पर एकत्र होने वाले ऊपरी संस्तर को हटाने का कार्य दिया गया था और उक्त ठेका कार्य करने का था न कि श्रमिक उपलब्ध करवाने का।

मैंने उक्त तर्कों पर मनन किया तथा पत्रावली का ध्यानपूर्वक अध्ययन किया।

श्रमिकगण ने अपने स्टेटमेंट ऑफ क्लेम के अनुच्छेद क्रम 3 व 4 में यह स्पष्ट अभिवचन किया है कि विपक्षी क्रम 1 राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर ने विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज को खानों से उत्पादित माल हटाने का कार्य ठेके पर दिया और ठेके पर लिए कार्य को सम्पन्न करने के लिए विपक्षी क्रम 2 ने 250 श्रमिकों को वर्ष 1981 में नियोजित किया। इस प्रकार से स्वयं श्रमिकगण का यह अभिवचन रहा है कि विपक्षी क्रम

2 ने विपक्षी क्रम 1 का विशिष्ट कार्य करने के लिए ठेका लिया था और इस कार्य को सम्पादित करने के लिए विपक्षी क्रम 2 ने ही उक्त श्रमिकों को नियोजित किया था। आगे भी प्रार्थी ने अपने अभिवचन, स्टेटमेंट ऑफ क्लेम, के अनुच्छेद 7 में यह अंकित किया है कि विपक्षी क्रम 2 ने ही श्रमिकों की छटनी करने के लिए भारत सरकार में प्रार्थना पत्र प्रस्तुत किया और अनुच्छेद क्रम 10 में यह कहा है कि विपक्षी क्रम 2 ने 137 श्रमिकों की छटनी कर दी। इस प्रकार से स्पष्ट है कि अपने स्टेटमेंट ऑफ क्लेम में प्रार्थी, उक्त श्रमिकों को स्वयं ही विपक्षी क्रम 2 के नियोजन में होना, स्वीकार करते हैं और यह भी स्वीकार करते हैं कि उनका नियोजन, ठेके पर लिए गए विशिष्ट कार्य को सम्पादित करने के लिए, किया गया था। यहां यह भी उल्लेख करना उचित है कि विपक्षी क्रम 1 ने अपने उत्तर में यह अभिकथित किया है कि विपक्षी क्रम 2 को खानों से उत्पादित ऊपरी संस्तर को हटाने का ठेका दिया हुआ था और जितना माल हटाया जाता है, उसी हिसाब से भुगतान किया जाता है; विपक्षी क्रम 1 की विपक्षी क्रम 2 के साथ श्रमिक उपलब्ध करवाने की संविदा नहीं थी और विपक्षी क्रम 1 द्वारा विपक्षी क्रम 2 को काम के आधार पर भुगतान किया जाता था और मशीन, मजदूर और अन्य व्यक्ति भी विपक्षी क्रम 2 द्वारा ही लगाए जाते थे। विपक्षी क्रम 1 के द्वारा किए गए उक्त स्पष्ट अभिवचनों का प्रार्थी की ओर से प्रतिउत्तर में कोई खण्डन नहीं किया गया है, बल्कि इन तथ्यों को प्रार्थी द्वारा स्वीकार किया गया है। ऐसी स्थिति में यह नहीं कहा जा सकता कि उक्त संविदा जो कि विपक्षी क्रम 1 और विपक्षी क्रम 2 के मध्य हुई, वह श्रमिक उपलब्ध कराने की संविदा थी। वैसे भी दिनांक 14.05.1981 के इकरारनामा प्रदर्श एम-92 के संबंध में श्रमिकगण की ऐसी कोई आपत्ति नहीं रही है कि यह इकरारनामा छद्म और दिखावटी रहा हो। वास्तव में यह इकरारनामा तो श्रमिकगण को नियोजन में लेने से पूर्व विपक्षी क्रम 1 और विपक्षी क्रम 2 के मध्य हुआ था।

श्रमिकगण की ओर से जो ऊपर वर्णित साक्षी प्रस्तुत हुए हैं, उन्होंने सभी ने अपनी साक्ष्य के मुख्य कथन में यह प्रकट किया है कि उनकी प्रथम नियुक्ति वर्ष 1981 में राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के यहां, उनके अधीन, नियंत्रण में, उन्हीं के कार्य और उत्पादन के लिए की गई थी; उन्हें कार्य के संबंध में आदेश, निर्देश राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के पदाधिकारियों द्वारा दिए जाते थे और कार्य भी राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के लिए लिया जाता था; उन्हें मेडिकल की सुविधा राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर द्वारा दी जाती थी और अवकाश भी राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर द्वारा ही दिया जाता था। प्रोविडेंट फण्ड की राशि राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर में जमा होती थी। उन्हें राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर में काम करने के लिए मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज, उदयपुर के माध्यम से काम पर लगाया था और वह उसे नियुक्ति दिलाने में मध्यस्थ था। उनकी नियुक्ति विपक्षी क्रम 1 के लिए की गई थी और उन्हीं के द्वारा उससे काम लिया जाता था। उनकी सेवाएं समाप्त होने से पहले विपक्षी क्रम 1 ने भारत सरकार से अनुमति प्राप्त नहीं की।

मैंने उक्त साक्षीगण के ऊपर वर्णित कथनों का ध्यानपूर्वक अध्ययन किया। अपने अभिवचनों के सर्वथा विपरीत उक्त साक्षीगण ने यह कथन किया है कि उन्हें राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर में वर्ष 1981 में या अन्य किसी तिथि को नियुक्ति दी गई थी जबकि प्रार्थी के स्टेट ऑफ क्लेम में स्पष्टतः यह कहा गया है कि विपक्षी क्रम 2 ने उन्हें वर्ष 1981 में नियोजित किया था। उक्त साक्षीगण ने प्रतिपरीक्षा में अपने नियुक्ति पत्र उमेश सिंह प्रदर्श एम-5, लिम्बा प्रदर्श एम-11, मनोहर लाल प्रदर्श एम-1, रमजान बेग प्रदर्श एम-16, मोती प्रदर्श एम-27, नाथू प्रदर्श एम-22, चैना प्रदर्श एम-37, शंकर प्रदर्श एम-32, कालूराम प्रदर्श एम-45, मौ. हनीफ प्रदर्श एम-49, शाका प्रदर्श एम-54, मांगीलाल प्रदर्श एम-60, औंकार सिंह प्रदर्श एम-66, अब्दुल रहीम प्रदर्श एम-77, करिंग लाल प्रदर्श एम-79, दूलीचन्द प्रदर्श एम-84 एवं झनकाराम प्रदर्श एम-71 होना स्वीकार किया है और इन पर अपने हस्ताक्षर होना तथा इन पर अपना छायाचित्र लगा होना भी स्वीकार किया है। इन समस्त नियुक्ति पत्रों को देखने से स्पष्ट है कि ये सभी नियुक्ति पत्र विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज, उदयपुर द्वारा इन्हें जारी किए गए हैं। इन्हीं नियुक्ति पत्रों के आधार पर उक्त श्रमिक नियोजन में आए हैं। ऐसी स्थिति में इनका यह कथन कि उन्हें राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के यहां नियुक्ति दी गई थी, सर्वथा मिथ्या है। उक्त साक्षीगण ने अपने कथन में अवकाश, बोनस, मेडिकल आदि की सुविधाएं राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर द्वारा दिया जाना कहा है, परन्तु श्रमिक द्वारा स्वीकृत दस्तावेज समझौता दिनांक 26.05.1981 को देखने से यह स्पष्ट है कि किये सभी सुविधाएं श्रमिकगण को देना विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज ने स्वीकार किया है।

उक्त साक्षीगण ने यह कहा है कि उन्हें कार्यका आदेश और निर्देश राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के अधिकारियों द्वारा दिया जाता था, जबकि इकरारनामा दिनांक 14.05.1981 प्रदर्श एम-92 के अनुच्छेद 57 के अनुसार ठेकेदार द्वारा ही समस्त कार्य का नियंत्रण, निर्देशन किया जाना था। यहां यह भी उल्लेखनीय है कि अपने स्टेटमेंट ऑफ क्लेम और प्रतिउत्तर में कहीं भी श्रमिकों का यह अभिवचन नहीं रहा है कि उन्हें कार्य हेतु निर्देश राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के अधिकारियों द्वारा दिए जाते हों और न ही यह अभिकथन रहा है कि उन्हें सुविधाएं और भुगतान राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर द्वारा दिये जाते हैं। उक्त सम्पूर्ण कथन भी श्रमिकों के अपने अभिवचनों से बाहर के हैं, और इस कारण से साक्ष्य में ग्राह्य नहीं हैं।

विपक्षी क्रम 1 की ओर से साक्षी आर. के. मेहता को परीक्षित करवाया गया है। इस साक्षी ने अपने मुख्य कथन में यह स्पष्टतः कहा है कि दिनांक 14.05.1981 को विपक्षी क्रम 1 और विपक्षी क्रम 2 के मध्य एक संविदा हुई थी और विपक्षी क्रम 2 को ब्लॉक बी, सी, डी, ई झॉमर-कोटडा खदान में ऊपरी संस्तर हटाने का ठेका दिया गया था। यह इकरारनामा प्रदर्श एम-92 है। ऑवर बर्डन हटाने का ठेका 35.8 रुपये प्रति क्यूबिक मीटर की दर से देय था तथा यह कार्य करने से संबंधित ठेका था। इसमें श्रमिकों को नियुक्त करने का विपक्षी

क्रम 1 संस्थान पर कोई भार नहीं था। इस कार्य को पूरा करने के लिए अपने स्तर पर मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज ने श्रमिकों को भर्ती किया और इसके लिए आवश्यक मशीनें चलाने, सुधारने वालों आदि की व्यवस्था मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज ने अपने स्तर पर की थी। मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के श्रमिकों पर राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर का नियंत्रण और पर्यवेक्षण नहीं था। मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज ने जिन्हें भर्ती किया और नियुक्ति पत्र जारी किए, उससे राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर का कोई संबंध नहीं है। मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के श्रमिकों को चिकित्सा सहायता, वेतन भत्ते या अन्य लाभ संस्थान ने नहीं दिए और न ही संस्थान की ऐसी जिम्मेदारी थी। प्रतिपरीक्षा में भी इस साक्षी ने यही कहा है कि उक्त श्रमिकों को बोनस मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज द्वारा दिया जाता था, न कि राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर द्वारा ठेकेदार को मुनाफे के अनुसार बोनस देना था। प्रोविडेन्ड फण्ड की कटौती भी मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज कम्पनी द्वारा की जाती थी, जो राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के ट्रस्ट में जमा होती थी। श्रमिकों को प्रतिमाह वेतन मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज द्वारा दिया जाता था और राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर इसकी निगरानी रखता था। श्रमिकों की छुट्टी व घटने-बढ़ने से राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर का कोई संबंध नहीं था। इस प्रकार से इस साक्षी की प्रतिपरीक्षा में भी ऐसी कोई बात नहीं आई है, जिससे यह प्रकट होता हो कि उक्त श्रमिकों को नियोजन राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर ने दिया हो, उनका वेतन आदि राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर द्वारा दिया जाता हो अथवा उनके कार्य पर नियंत्रण राजस्थान स्टेट माइन्स एण्ड मिनरल लि. का हो। इसके विपरीत साक्ष्य से यह प्रमाणित है कि उक्त समस्त श्रमिकों की नियुक्ति मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज द्वारा की गई है और उन्हें वेतन, भत्ते, बोनस आदि का भुगतान मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज द्वारा ही किया जाता था और उनके कार्य आदि का नियंत्रण, निर्देशन भी मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के ही कर्मचारी करते थे। उक्त श्रमिकों को सेवा पृथक् करने का भी अधिकार मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज को ही था, जैसा कि दिनांक 14.05.1981 की संविदा के अनुच्छेद 57 से स्पष्ट हो रहा है। ऐसी स्थिति में जो साक्ष्य पत्रावली पर आई है, उससे भी किसी भी रूप में यह प्रमाणित नहीं होता है कि उक्त श्रमिकगण विपक्षी क्रम 1 राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के नियोजन में थे, वरन यही प्रमाणित हो रहा है कि ये विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के नियोजन में थे और उसी के द्वारा नियुक्त किया गया था।

माननीय उच्चतम न्यायालय ने अपने विनिश्चय -

2014 (9) Supreme Court Cases 407

(Balwant Rai Saluja & Another Vs Air India Limited & Others)

में यह अभिनिर्णित किया है कि नियोजक और नियोक्ता के संबंध को निर्धारित करते समय निम्न कारकों को ध्यान में रखा जाना चाहिए -

1. श्रमिकों की नियुक्ति किसके द्वारा की गई ?
2. श्रमिकों को वेतन आदि का भुगतान कौन करता है ?
3. श्रमिकों को बर्खास्त करने की शक्ति किसके पास है ?
4. श्रमिकों को पर बाहरी नियंत्रण और निर्देशन किसका है आदि आदि ?

जैसाकि ऊपर वर्णित किया गया है कि वर्तमान प्रकरण में स्वयं प्रार्थी की स्वीकृति और उभय पक्षकारों की साक्ष्य जिसका ऊपर विवेचन किया गया है, से यह स्पष्ट प्रमाणित हो रहा है कि उक्त श्रमिकों की नियुक्ति विपक्षी क्रम 2 द्वारा की गई। उन्हें वेतन भी विपक्षी क्रम 2 द्वारा ही दिया जाता था, उनके कार्यों पर नियंत्रण भी विपक्षी क्रम 2 का था और उन्हें बर्खास्त करने की शक्ति भी विपक्षी क्रम 2 के ही पास थी। ऐसी स्थिति में सभी परिस्थितियों में यह पूर्णतः प्रमाणित है कि उक्त श्रमिक विपक्षी क्रम 2 के ही नियोजन में थे और वही इनका नियोजक था।

श्रमिकगण के विद्वान प्रतिनिधि का एक तर्क यह रहा है कि विपक्षी क्रम 2 ठेकेदार का वही कार्य था, जो विपक्षी क्रम 1 राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर का है। उनका यह भी तर्क है कि विपक्षी क्रम 1 एवं विपक्षी क्रम 2 दोनों ही कोन्ट्रैक्ट लेबर एक्ट 1970 के अन्तर्गत पंजीकृत व लाईसेंस धारक नहीं हैं जो कि इस अधिनियम की धारा 7, 8, 12, एवं 13, के अन्तर्गत आज्ञापक है। ऐसी स्थिति में विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज को विपक्षी क्रम 1 राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर का ठेकेदार नहीं माना जा सकता वह तो वास्तविकता में राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर का एजेंट है और ऐसी स्थिति में उक्त सभी श्रमिक वास्तविकता में राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के ही श्रमिक हैं। अपने इस तर्क के समर्थन में निम्न विनिश्चय प्रस्तुत किए -

2000 (1) LLJ (D.B.) 593

(Employers in relation to Management of Sudamdih Colliery of BCCL, Dist. Dhanbad Vs Presiding Officer, Central Govt., Industrial Tribunal No. 1, Dhanbad.)

इस विनिश्चय में माननीय पटना उच्च न्यायालय ने यह निर्णित किया है कि बिना लाईसेंस प्राप्त ठेकेदार द्वारा नियोजित श्रमिक मुख्य नियोजक के श्रमिक घोषित किए जाएंगे।

2011 (2) WLC (S. C.) 590

(Bhilwara Dugdh Utpadak Vs Vinod Kumar)

इस विनिश्चय में यह अभिनिर्धारित किया गया है कि जहां नियोजक का यह कथन था कि कर्मकार ठेकेदार द्वारा नियुक्त थे और इसे कपटपूर्ण पाया गया और उन्हें नियोजक के कर्मकार माना गया,

इसमें हस्तक्षेप नहीं किया जाना सही है।

1999 (3) SCC 601

(Secretary, HSEB Vs Suresh & Others.)

इस विनिश्चय में भी यह अभिनिर्धारित किया गया है कि जहां ठेकेदार के पास कान्ट्रैक्ट लेबर (रेग्युलेशन एवं एबॉलिशन) एक्ट 1970 के अन्तर्गत लाईसेंस नहीं हो और मुख्य नियोजक पंजीकृत नहीं हो, वहां ठेकेदार के कर्मचारी मुख्य नियोजक के ही कर्मचारी होंगे।

इसके विपरीत विपक्षी क्रम 1 के विद्वान प्रतिनिधि का तर्क है कि उनके साक्षीगण के कथनों से यह प्रमाणित है कि विपक्षी क्रम 1 राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर कान्ट्रैक्ट लेबर (रेग्युलेशन एवं एबॉलिशन) एक्ट 1970 के अन्तर्गत पंजीकृत था और विपक्षी क्रम 2 ठेकेदार मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज ने लाईसेंस प्राप्त कर रखा था। उनका यह भी तर्क है कि यदि यह मान भी लिया जावे कि ऐसा होना प्रमाणित नहीं है तो भी धारा 7 और 12 कान्ट्रैक्ट लेबर (रेग्युलेशन एवं एबॉलिशन) एक्ट 1970 की अपालना के कारण उक्त श्रमिक विपक्षी क्रम 1 के श्रमिक नहीं हो जाते हैं। धारा 7 व 12 की पालना नहीं होने के मात्र दाण्डिक प्रभाव हैं, जो धारा 23 के अन्तर्गत हैं इसका अन्य कोई प्रभाव नहीं है। अपने इस तर्क के समर्थन में उच्चतम न्यायालय की संविधान पीठ का निम्न विनिश्चय पेश किया है -

2001 (7) Supreme Court Cases 1

(Steel Authority of India Ltd. & Others Vs. National Union Waterfront Workers & Others)

मैंने इस संबंध में उभय पक्षकारों के तर्क वितर्क पर मनन किया व प्रस्तुत विनिश्चयों का ध्यानपूर्वक अध्ययन किया।

प्रार्थी के इस संबंध में कोई अभिवचन पत्रावली पर नहीं हैं कि विपक्षी क्रम 1 कान्ट्रैक्ट लेबर (रेग्युलेशन एवं एबॉलिशन) एक्ट 1970 के अन्तर्गत पंजीकृत संस्था नहीं है और विपक्षी क्रम 1 ठेकेदार के पास इस अधिनियम के अन्तर्गत लाईसेंस नहीं है। विपक्षी क्रम 1 ने अपने जवाब में इस संबंध में स्वयं का पंजीकृत होना और विपक्षी क्रम 2 का लाईसेंस धारक होना अभिकथित किया है परन्तु प्रार्थी ने अपने प्रति-उत्तर में विपक्षी क्रम 1 द्वारा अभिकथित उक्त तथ्यों को खण्डित नहीं किया है और इनका विशिष्टतः प्रत्याख्यान नहीं किया है और इस प्रकार से उसने इन तथ्यों को स्वीकार कर लिया है।

इस संबंध में प्रार्थी के ऊपर वर्णित साक्षीगण ने कोई कथन ही नहीं किया है।

विपक्षी क्रम 1 का साक्षी सज्जनसिंह शक्तावत न्यायाधिकरण में परीक्षित हुआ है। इस साक्षी ने अपने मुख्य कथन के शपथ पत्र में यह कहा है कि मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज एक ठेकेदार कम्पनी थी, कान्ट्रैक्ट लेबर (रेग्युलेशन एवं एबॉलिशन) एक्ट 1970 के तहत अनुज्ञा पत्र संख्या 359/81 दिनांक 31.05.1981 ले रखा था और राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर ने भी इस अधिनियम के अन्तर्गत ठेकेदार लगाने के लिए रजिस्ट्रेशन करवा रखा

है। रजिस्ट्रेशन प्रमाण पत्र 40/75 दिनांक 19.11.75 है। इस साक्षी से उक्त रजिस्ट्रेशन प्रमाण पत्र और लाईसेंस के संबंध में प्रतिपरीक्षा में कोई प्रश्न ही नहीं किया गया है, और नही यह कहा गया है कि उक्त पंजीयन नम्बर और लाईसेंस संख्या गलत बताए गए हैं यही भी उल्लेखनीय है कि पत्रावली में भारत सरकार श्रम मंत्रालय का पत्र क्रमांक L.E.O.UD/95(1)/89 Dated 30.08.1989 मौजूद है, जिसमें यह उल्लेखित है कि कान्ट्रेक्ट लेबर एक्ट के अन्तर्गत विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज का लाईसेंस 359/81 दिनांक 30.05.87 तक नवीनीकृत है, इससे स्पष्ट है कि विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज उक्त अधिनियम के अन्तर्गत लाईसेंस धारक है। वैसे भी विपक्षी क्रम 1 और विपक्षी क्रम 2 कान्ट्रेक्ट लेबर (रेग्युलेशन एवं एबॉलिशन) एक्ट 1970 अन्तर्गत पंजीकृत एवं लाईसेंससुदा पर्वी होने का यह प्रभाव नहीं हो सकता कि विपक्षी क्रम 2 के कर्मचारी विपक्षी संख्या 1 के कर्मचारी हो जावेंगे। यही सिद्धांत माननीय उच्चतम न्यायालय ने अपने विनिश्चय

2001 (7) Supreme Court Cases 1

(Steel Authority of India Ltd. & Others Vs. National Union Waterfront Workers & Others) प्रतिपादित किया है।

इस विनिश्चय में माननीय उच्चतम न्यायालय की संविधान पीठ ने यह निर्णित किया है कि धारा 7 एवं 12 कान्ट्रेक्ट लेबर (रेग्युलेशन एवं एबॉलिशन) एक्ट 1970 की अपालना का परिणाम अधिनियम की ही धारा 23 और 25 में दिया गया है और इनकी अपालना का यह प्रभाव नहीं होगा कि उक्त श्रमिक मुख्य नियोजक के कर्मचारी हो जावेंगे। उक्त विनिश्चय में संविधान पीठ द्वारा प्रतिपादित इस सिद्धांत के प्रकाश में कर्मिक प्रतिनिधि द्वारा प्रस्तुत विनिश्चयों में प्रतिपादित सिद्धांतों को कतई लागू नहीं किया जा सकता।

उपर्युक्त विवेचन से यही निष्कर्ष निकलता है कि उक्त श्रमिकगण विपक्षी क्रम 2 के ही नियोजन में थे और विपक्षी क्रम 1 के नियोजन में नहीं थे। विपक्षी क्रम 2 ने विपक्षी क्रम 1 से ठेके पर लिए गए कार्य को करवाने हेतु इन श्रमिकों की नियुक्ति की थी; केवल विपक्षी क्रम 1 के यहां कार्य करने मात्र से उक्त श्रमिक विपक्षी क्रम 1 के कर्मचारी नहीं हो जाते। इस प्रकार से उक्त समस्त विवादकों के संबंध में यही निर्णीत किया जाता है कि उक्त समस्त श्रमिकगण विपक्षी क्रम 2 के नियोजन में थे, न कि विपक्षी क्रम 1 के। इस निष्कर्ष का क्या प्रभाव होगा, यह पश्चात्तर्वी प्रक्रम पर विवेचित किया जावेगा।

विवादक संख्या 6 :-

श्रमिकगण ने अपने स्टेटमेंट ऑफ क्लेम के अनुच्छेद क्रम 6 में विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज एवं रॉक फॉस्फेट मजदूर संघ के मध्य दिनांक 26.05.1981 को समझौता होना अभिकथित किया। विपक्षी क्रम 2 ने अपने जवाब में दिनांक 26.05.1981 को उक्त समझौता रॉक फॉस्फेट मजदूर संघ के साथ किया जाना स्वीकार किया है। इस प्रकार से दिनांक 26.05.1981 को

समझौता विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज एवं रॉक फॉस्फेट मजदूर संघ के मध्य होना एक स्वीकृत तथ्य है। इस समझौते में विपक्षी क्रम 2 ने यह स्वीकार किया है कि उनके जो श्रमिक विपक्षी क्रम 1 की झामर-कोटडा खानों पर कार्य कर रहे हैं, उन्हें वही वेतन भत्ते दिए जावेंगे, जो उसी प्रकृति का कार्य कर रहे राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के श्रमिक प्राप्त कर रहे हैं। साथ ही इस समझौते में श्रमिकों को बोनस देना, अवकाश आदि देने के संबंध में भी समझौते हुए तथा इस समझौते में यह भी सहमति हुई कि नई भर्ती करते समय झामर-कोटडा खान पर कार्यरत राजस्थान स्टेट माइन्स एण्ड मिनरल लि. के श्रमिकों को प्राथमिकता दी जावेगी।

उक्त समझौता दिनांक 26.05.1981 प्रकरण में साक्ष्य में प्रदर्शित नहीं हुआ है, परन्तु यह विपक्षी क्रम 2 व प्रार्थी के मध्य स्वीकृत है और इसे उन्हीं के परिप्रेक्ष्य में पढ़ना उचित है। इस समझौते के संबंध में विपक्षी क्रम 1 ने यह उत्तर दिया है कि वह ऐसे किसी समझौते से पाबन्द नहीं है।

विधि का यह सुस्थापित सिद्धान्त है कि कोई भी समझौता इसके पक्षकारों पर ही बाध्यकारी प्रभाव रखता है। वैसे भी इस समझौते में ठेकेदार मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज ने अपने उन कर्मचारियों जोकि झामर कोटडा खानों पर कार्य कर रहे थे, को कुछ वेतन, सुविधाएं आदि देना स्वीकार किया है। इससे विपक्षी क्रम 1 पर किसी प्रकार का कोई प्रभाव पड़ता हो अथवा विपक्षी क्रम 1 इससे बाध्य हो, यह नहीं कहा जा सकता। जहां तक नई भर्ती में प्राथमिकता देने का प्रश्न है, इस संबंध में भी मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज ने ही यह स्वीकार किया है कि वह झामर कोटडा खानों पर कार्यरत कर्मियों को सेवा में प्राथमिकता देगा। राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर द्वारा किसी प्रकार की प्राथमिकता दिया जाना इस समझौते में वर्णित नहीं है।

जो निर्देश इस न्यायाधिकरण के समक्ष निर्णय के लिए आया है, उसके संबंध में मेरे विचार से उक्त समझौते का कोई प्रभाव नहीं है। इसी प्रकार यह विवादक निर्णीत किया जाता है।

विवादक संख्या 7 :-

श्रमिकगण का स्टेटमेंट ऑफ क्लेम में अभिकथन है कि विपक्षी क्रम 2 ने विपक्षी क्रम 1 के ठेके पर लिए गए कार्य को सम्पन्न करने के लिए 250 श्रमिकों को वर्ष 1981 में नियोजित किया था।

विपक्षी क्रम 2 ने अपने उत्तर में यह अभिकथित किया है कि मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज एवं रॉक फॉस्फेट मजदूर संघ के साथ एक द्विपक्षीय समझौता दिनांक 26.05.1981 को किया। दिनांक 26.05.1981 के समझौते से यह स्पष्टतः दर्शित है कि उसने श्रमिकों को निश्चित समय के लिए नियोजित किया था। उनका यह भी अभिकथन है कि संविदा द्वारा लिया गया कार्य पूर्ण नहीं होने के कारण उन्होंने विपक्षी क्रम 1 के साथ संविदा की समयावधि के विस्तार हेतु एक सप्लीमेन्ट्री एग्रीमेंट किया और रॉक फॉस्फेट मजदूर

संघ के साथ किए गए समझौते दिनांक 26.05.1981 के अनुसरण में उक्त श्रमिकों को संविदाकृत कार्य करने के लिए अपने नियोजन में जारी रखा, क्योंकि यह नियोजन की शर्त थी। दिनांक 25.02.1985 को विपक्षी क्रम 2 ने रॉक फॉस्फेट मजदूर संघ के साथ एक द्विपक्षीय समझौता किया, जिसमें यह स्पष्ट किया गया कि उक्त श्रमिक विपक्षी क्रम 2 द्वारा निश्चित समय अर्थात् संविदा के समय तक के लिए ही नियोजित किए गए हैं।

श्रमिक गण ने उक्त अभिवचनों का प्रतिउत्तर प्रस्तुत करते हुए दिनांक 26.05.1981 और 25.02.1985 के समझौते होना स्वीकार किया और यह अभिकथित किया कि ठेके की कार्य अवधि बढ़ाने का उद्देश्य विपक्षी क्रम 2 के यहां कार्यरत श्रमिकों को नियोजन देते रहना भी था। यह भी अभिकथित किया कि 25.02.1985 के समझौते के अनुसार विपक्षी क्रम 2 को ठेके की अवधि तक श्रमिकों को नियोजन में रखना चाहिए था। साथ ही यह भी अभिकथित किया है कि विपक्षी क्रम 2 ने श्रमिकों को नियुक्ति पत्र नहीं दिए इस कारण उनकी सेवाएं निश्चित अवधि के लिए होना गलत है।

उक्त अभिवचनों से ही, यह तो स्पष्टतः प्रकट हो रहा है कि श्रमिक स्वयं यह स्वीकार करते हैं कि उक्त श्रमिकों को ठेके की अवधि तक ही नियोजन में लिया गया था। श्रमिकगण की ओर से साक्षीगण मोहनसिंह खमेसरा, प्रार्थी संघ के अध्यक्ष के साथ-साथ श्रमिक नाथू, चैना, रमजान बेग, ओंकार सिंह, टंगचन्द पी. के., अब्दुल रहमान, मोती, शंकर, फकीर मौहम्मद, बलीस्तर, मेरा, केरिंग लाल, दौलतसिंह, दलीचन्द लक्ष्मण सिंह में आए हैं। उन्होंने नियुक्ति पत्र उमेश सिंह प्रदर्श एम-5, लिम्बा प्रदर्श एम-11, मनोहर लाल प्रदर्श एम-1, रमजान बेग प्रदर्श एम-16, मोती प्रदर्श एम-27, नाथू प्रदर्श एम-22, चैना प्रदर्श एम-37, शंकर प्रदर्श एम-32, कालूराम प्रदर्श एम-45, मौ. हनीफ प्रदर्श एम-49, शाका प्रदर्श एम-54, मांगीलाल प्रदर्श एम-60, ओंकार सिंह प्रदर्श एम-66, अब्दुल रहीम प्रदर्श एम-77, केरिंग लाल प्रदर्श एम-79, दूलीचन्द प्रदर्श एम-84, एवं झनकाराम प्रदर्श एम-71 पर अपने हस्ताक्षर होना और इन पर अपने छायाचित्र होना स्वीकार किया है। ऐसी स्थिति में यह कहना कि नियुक्ति पत्र जारी नहीं किए गए, सही प्रतीत नहीं होता है। उक्त नियुक्ति पत्रों में यह स्पष्टतः अंकित है कि उक्त विशिष्ट संविदात्मक कार्य के लिए ही नियुक्ति दी गई थी। समझौता दिनांक 25.02.1985 जो कि श्रमिक और विपक्षी क्रम 2 के मध्य स्वीकृत दस्तावेज है, में भी यह समझौता हुआ कि जब भी कार्य समाप्त अथवा कम हो जावेगा तो प्रबन्धन के पास श्रमिकों की छूटनी करने का विकल्प होगा। इस शर्त से भी यही दर्शित होता है कि विपक्षी क्रम 2 ने श्रमिकों को निश्चित समय के लिए ही सेवा में लिया था। अतः यह विवाद्यक इसी प्रकार निर्णित किया जाता है।

विवाद्यक संख्या 5 :-

श्रमिकगण ने अपने स्टेटमेंट ऑफ क्लैम के अनुच्छेद 5 में यह अभिकथन किया है कि विपक्षी क्रम 1 ने उनके यहां मान्यता प्राप्त यूनियन रॉक फॉस्फेट मजदूर संघ से दिनांक 19.05.1981 को एक समझौता किया, जिसमें यह तय किया गया कि विपक्षी क्रम 2 का

कार्य समाप्त हो जाने पर उनके यहां कार्य करने वाले श्रमिकों को विपक्षी क्रम 1 अपने यहां प्राथमिकता देंगे।

विपक्षी क्रम 1 ने इसका उत्तर प्रस्तुत कर इसमें अंकित तथ्यों को अस्वीकार किया और यह अभिकथित किया कि दिनांक 19.05.1981 का कोई समझौता विपक्षी क्रम 1 व मान्यता प्राप्त यूनियन के बीच नहीं हुआ। दिनांक 19.05.1981 का यह दस्तावेज समझौता नहीं है। रॉक फॉस्फेट मजदूर संघ जो कि विपक्षी क्रम 1 के यहां मान्यता प्राप्त संगठन है, समय-समय पर अपनी कठिनाईयों और मांगपत्र देता रहता है और इनके संबंध में वार्ताएं होती हैं, जिसका ब्यौरा संस्थान में रखा जाता है। इन ब्यौरों को अन्तिम समझौते के समय ध्यान में रखकर दोनों पक्षकार लम्बा समझौता करते हैं। दिनांक 19.05.1981 की वार्ता मजदूर संघ द्वारा पुनर्वर्गीकरण (Recategorization) की मांग के संबंध में हुई थी। इसमें आपसी विचार विमर्श हुआ और उनका विवरण कार्यवृत्त (Minutes) में दिया गया, परन्तु यह कार्यवृत्त किसी भी समझौते का भाग नहीं बना, जबकि इस कार्यवृत्त के अन्तिम अनुच्छेद में ऐसा वांछनीय है। इस कार्यवृत्त के विवादस्पद तथ्यों की कभी भी दोनों पक्षों द्वारा पालना नहीं की गई। इस संबंध में विपक्षी क्रम 1 का यह भी अभिकथन रहा है कि यूनियन द्वारा जोर डालने पर कि ठेका समाप्त होने के बाद ठेकेदार के श्रमिकों को नए श्रमिकों के मुकाबले प्राथमिकता दी जावे, कम्पनी ने सिर्फ यह माना था कि ठेका पूरा हो जाने के बाद अगर कोई श्रमिक बेरोजगार हो जाता है तो प्राथमिकता दी जावेगी। प्राथमिकता का आशय नियुक्ति देना नहीं है। प्रार्थी के यहां नियुक्ति की निश्चित प्रक्रिया है, और उसी अनुरूप विज्ञापन देकर योग्यता के आधार पर चयन समिति द्वारा भर्ती की जाती है। ठेका समाप्त नहीं होने के कारण दिनांक 19.05.1981 कार्यवृत्त का कोई असर नहीं है।

विपक्षी क्रम 2 ने अपने उत्तर में प्रार्थी द्वारा किए गए अभिवचनों को विवादित नहीं होना अभिकथित किया है।

प्रार्थी के विद्वान प्रतिनिधि का यह तर्क है कि दिनांक 19.05.1981 का विलेख विपक्षी क्रम 1 तथा रॉक फॉस्फेट मजदूर संघ के मध्य लिखा गया है। यह कार्यवृत्त (Minutes) के रूप में लिखा गया है, परन्तु वास्तविकता में यह समझौते की तरह ही प्रवर्तनीय है। उनका तर्क है कि इस लेख पत्र के पैरा 3.1 में उल्लेखित शर्तों के अलावा सभी शर्तों की दोनों पक्षकारों द्वारा पालना की जा चुकी है और यह भी कि इसकी शर्तें दोनों पक्षकारों की समुचित ज्ञान में थी, और ये शर्तें न्यायोचित हैं तथा दोनों पक्षकारों में से किसी ने भी इससे इन्कार नहीं किया है। अनुच्छेद 2.1 से 2.4 तक की शर्तों की तो पालना ही हो चुकी है, उनका यह भी तर्क है कि दोनों ही पक्षकार विबन्धन के सिद्धांत से बाध्य हैं और इस लेखपत्र से पीछे नहीं हट सकते। अपने तर्क के समर्थन में निम्न विनिश्चय प्रस्तुत किये -

2008(3) ALT 173

(A.P.S.R.T.C. National Mazdoor Union Vs. A.P. State Road Transport Corporation & Others.)

1988(1) LLJ 207 AP

(Hindustan Zinc Workers Union & Others Vs. Management Of Agnigundala Lead)

इसके विपरीत विपक्षी क्रम 1 के विद्वान प्रतिनिधि का तर्क है कि दिनांक 19.05.1981 का अभिलेख विपक्षी क्रम 1 और रॉक फॉस्फेट मजदूर संघ के मध्य हुई मितिग का कार्यवृत्त मात्र है। 'कार्यवृत्त' समझौते की परिभाषा में नहीं आता है और बाध्यकारी प्रभाव नहीं रखता है। दिनांक 19.05.1981 के इस लेख पत्र में इसे भविष्य में लम्बे समझौते का भाग बनाया जाना अंकित किया है, परन्तु इसे किसी भी समझौते का भाग नहीं बनाया गया है। अपने उक्त तर्क के समर्थन में निम्न विनिश्चय प्रस्तुत किए -

2006 (3) Supreme Court Cases 523

(Indian Drugs & Pharmaceuticals Ltd. Vs Devki Devi And Others.) 1991 (1) LLR 481

(International Airports Authority of India Workers Union Vs. International Airports Authority of India & Others)

मैंने उक्त तर्क वितर्क पर मनन किया। दिनांक 19.05.1981 का लेख पत्र प्रकरण में प्रदर्श डबल्यू -1 के रूप में प्रदर्शित है। इसे लिखा जाना प्रार्थी और विपक्षी क्रम 1 दोनों ही स्वीकार करते हैं। विवाद यह है कि इस लेख पत्र की प्रकृति क्या है और इसका पक्षकारों पर क्या बाध्यकारी प्रभाव है।

उक्त लेख पत्र जिस पर मान्यता प्राप्त संघ के अधिकांश पदाधि कारियों के हस्ताक्षर भी हैं पर स्पष्टतः यह अंकित है कि यह लेख पत्र दिनांक 19.05.1981 को प्रबन्ध-निदेशक के कक्ष में हुई मितिग का कार्यवृत्त है। इस लेख पत्र के पृष्ठ संख्या 6 पर यह स्पष्ट रूप से अंकित है कि पक्षकारों के बीच यह सहमति हुई कि ऊपर वर्णित तथ्यों के क्रम में एक विस्तृत समझौता हस्ताक्षरित किया जायेगा, जो दिनांक 21.04.1980 के लॉग-टर्म समझौते (लम्बे समझौते का भाग बनेगा। यदि दोनों पक्षकारों की मंशा इसे समझौते का रूप देने की और बाध्यकारी करने की होती तो यह अंकित नहीं किया जाता कि ऊपर मामलों में सहमति बनी है, उनके संबंध में विस्तृत समझौता हस्ताक्षरित किया जायेगा। ऐसी स्थिति में स्पष्ट है कि दिनांक 19.05.1981 का दस्तावेज प्रदर्श डबल्यू-1 समझौता नहीं है, बल्कि मितिग का कार्यवृत्त है।

उक्त कार्यवृत्त बाध्यकारी प्रभाव रखता है या नहीं, इस संबंध में प्रार्थी की ओर से विनिश्चय

2008 (3) ALT 173

(A.P.S.R.T.C. National Mazdoor Union Vs. A.P. State Road Transport Corporation & Others) प्रस्तुत किया गया है। प्रार्थी के विद्वान प्रतिनिधि ने अधिकरण का ध्यान इस निर्णय के अनुच्छेद क्रम 24 की ओर आकर्षित कर यह तर्क दिया कि इस अनुच्छेद में ऐसे कार्यवृत्त को धारा 2 (P) औद्योगिक विवाद अधि नियम के अन्तर्गत समझौता माना गया है।

मैंने इस तर्क पर मनन किया एवं प्रस्तुत विनिश्चय का ध्यान पूर्वक अध्ययन किया।

वास्तविकता में जिस अनुच्छेद की ओर विद्वान प्रतिनिधि ने ध्यान आकर्षित किया है, वह उस मामले के अपीलार्थी की ओर से प्रस्तुत तर्क मात्र था और इसके अगले ही अनुच्छेद में माननीय आन्ध्रप्रदेश उच्च न्यायालय ने यह अंकित किया है कि उन्होंने विद्वान अधिवक्ता द्वारा प्रस्तुत निर्णयों का ध्यानपूर्वक अवलोकन कर लिया है और वे इस मत के हैं कि वर्तमान प्रकरण में उक्त विनिश्चय के सिद्धान्त लागू नहीं होते हैं। इस प्रकार से उक्त विनिश्चय जो प्रार्थी के द्वारा प्रस्तुत किया गया है में माननीय उच्च न्यायालय द्वारा मिनिट्स को "समझौता" नहीं माना गया है।

प्रार्थी द्वारा 1988 (1) LLJ 207 AP

(Hindustan Zinc Workers Union & Others Vs. Management of Agnigundala Lead) विनिश्चय प्रस्तुत किया गया है। इस विनिश्चय में आन्ध्रप्रदेश उच्च न्यायालय ने मिनिट्स को वैध समझौता माना, परन्तु उन्होंने यह भी प्रेक्षित किया है कि यह वैध समझौता है, क्योंकि यह समझौता, सुलह-प्रक्रिया के दौरान हुआ है। वर्तमान प्रकरण के तथ्य इससे सर्वथा भिन्न हैं। ऐसी स्थिति में इस विनिश्चय से भी कोई लाभ प्रार्थी को प्राप्त नहीं हो सकता।

प्रार्थी प्रतिनिधि ने अपने तर्क में यह भी कहा है कि दिनांक 19.05.1981 के दस्तावेज की अन्य सभी शर्तों की पालना पक्षकारों द्वारा की जा चुकी है, परन्तु इस तथ्य को प्रमाणित करने के लिए प्रार्थी की ओर से कोई साक्ष्य पत्रावली पर नहीं है, जिससे प्रकट होता हो कि दिनांक 19.05.1981 के दस्तावेज की अन्य सभी शर्तों की पालना पक्षकारों के मध्य बाध्यकारी समझौते के रूप में हुई हो।

ऐसी स्थिति में मेरे विचार से यह प्रमाणित नहीं है कि दिनांक 19.05.1981 को विपक्षी क्रम 1 और रॉक फॉस्फेट मजदूर संघ के बीच लिखा गया दस्तावेज प्रदर्श डबल्यू-1 एक "समझौता" है। इसी प्रकार से यह विवाद्यक निर्णित किया जाता है।

विवाद्यक संख्या 3, 8 एवं 11 :-

उक्त तीनों विवाद्यक भी एक दूसरे से संबंधित हैं अतः इनके संबंध में विवेचन एक साथ किया जा रहा है।

प्रार्थी का अपने स्टेटमेंट ऑफ क्लेम में यह अभिकथन है कि विपक्षी क्रम 2 ने भारत सरकार के समच दिनांक 17.05.1985 और 02.07.1985 को प्रार्थना पत्र 137 श्रमिकों की छँटनी हेतु भेजे थे, जिसमें छँटनी का कारण ठेके का कार्य समाप्त होना बताया था। उक्त प्रार्थना पत्रों के भारत सरकार के समक्ष लम्बित रहने के दौरान ही विपक्षी क्रम 2 ने उनकी सेवाएं अवैध व अनुचित तरीके से समाप्त करने का मार्ग अपनाया और उक्त श्रमिकों की सेवाएं समाप्त करने की कार्यवाही करने से पूर्व मान्यता प्राप्त यूनियन रॉक फॉस्फेट मजदूर संघ, को विश्वास में नहीं लिया और अपनी मर्जी के पांच श्रमिक, जो उनके कहने में थे, के साथ दिनांक 26.07.1985 को एक समझौता कर लिया। यह समझौता श्रमिकों के हितों के विपरीत और अनुचित श्रम व्यवहार में आता है। विपक्षी क्रम 2 ने समस्त 37 श्रमिकों की छँटनी दिनांक 30.07.1985 को कर दी। यह छँटनी अवैध और बदनियतिपूर्ण है, क्योंकि छँटनी का कारण आधारहीन है। विपक्षी

क्रम 2 के ठेके का कार्य समाप्त नहीं हुआ था और वह कार्य 100 नए श्रमिक नियुक्त कर चलाया जा रहा है। पांच श्रमिकों द्वारा किया गया समझौता अवैध है और श्रमिकों के हितों के विपरीत है। विपक्षी क्रम 2 ने समझौते के कागज स्वयं तैयार करके, श्रमिकों को डरा, धमकाकर उन पर हस्ताक्षर करवाए हैं। पांच श्रमिकों, जिन्होंने समझौता किया, को श्रमिकों ने अपना प्रतिनिधि नहीं बनाया और उन्हें समझौते के लिए अधिकृत नहीं किया। विपक्षी क्रम 2 ने औद्योगिक विवाद अधिनियम की धारा 25(H) और ग्रेच्यूटी के लाभ से वंचित करने के लिए श्रमिकों के जबरन हस्ताक्षर करवाए और यह श्रमिक विरोधी समझौता करवाया, जो बदनियतिपूर्ण है। अधिकांश श्रमिक पांच वर्ष की सेवा अवधि दो माह में पूर्ण करने वाले थे। श्रमिकों ने स्वेच्छा से सेवा का त्याग नहीं किया, वे सेवा मुक्ति के बाद बेरोजगार हैं। इस प्रकार से छँटनी करके विपक्षी क्रम 2 ने उन्हें दिनांक 19.05.1981 के समझौते के लाभ से वंचित कर दिया है।

उक्त अभिवचनों का विपक्षी क्रम 1 ने यह उत्तर दिया है कि दिनांक 26.07.1985 का समझौता देखने से स्पष्ट हो रहा है कि यह त्रिपक्षीय समझौता है, जिस पर श्रमिकों के पांच प्रतिनिधि कर्मकारों ने हस्ताक्षर किए हैं। यह समझौता, सुलह अधिकारी के समक्ष विवाद के निपटारे हेतु किया गया है, जिसकी वैधता इस निर्देश में नहीं देखी जा सकती। यह भी अभिकथन किया है कि सेवा पर्यावसान समझौते के आधार पर किया गया है। किन श्रमिकों को नया भर्ती किया, उसका कोई विवरण प्रार्थी ने नहीं दिया है। प्रपत्र दिनांक 19.05.1981 के अनुसार प्राथमिकी का प्रश्न ठेका समाप्त होने पर उत्पन्न होता है। ठेका समाप्त नहीं होने की स्थिति में विपक्षी क्रम 1 का कोई दायित्व नहीं बनता है। दिनांक 19.05.1981 के प्रपत्र से कोई लाभ प्रार्थी प्राप्त नहीं पा सकते।

विपक्षी क्रम 2 ने इन अभिवचनों के संबंध में अपने जवाब में यह अभिकथित किया है कि उक्त श्रमिकों के संबंध में दिनांक 17.05.1985 और 02.07.1985 को उन्होंने धारा 25 N औद्योगिक विवाद अधिनियम के अन्तर्गत प्रार्थना पत्र केन्द्र सरकार को भिजवाए थे, जो अज्ञानतावश भेज दिए थे। इनके लम्बित रहने के दौरान ही श्रमिकों ने कुछ शर्तों पर स्वेच्छिक सेवानिवृत्ति की कार्यवाही शुरू करी और विपक्षी क्रम 2 को अधिकांश श्रमिकों ने हस्ताक्षर कर प्रार्थना पत्र दिए। इस प्रार्थना पत्र के प्राप्त होने पर पुनर्विचार पर उन्होंने पाया कि धारा 25 N औद्योगिक विवाद अधिनियम के प्रार्थना पत्र को Pursue करने की आवश्यकता नहीं है। इसके पश्चात् सुलह अधिकारी, केन्द्रीय के समक्ष कार्यवाही हुई। दिनांक 25 जुलाई, 1985 को सुलह अधिकारी ने समझौता अभिलिखित किया। इस सुलह समझौते को रॉक फॉस्फेट मजदूर संघ ने भी सहर्ष स्वीकारा और निर्देश में वर्णित 137 श्रमिकों ने इस समझौते के तहत प्राप्त होने वाले आर्थिक लाभ प्राप्त कर लिए हैं। वास्तविकता में धारा 2 (00) के अन्तर्गत उनके द्वारा श्रमिकों की सेवाएं समाप्त नहीं की गई हैं वरन श्रमिकों ने स्वेच्छिक सेवानिवृत्ति ली है। उन्होंने किसी भी मजदूर से जबरन हस्ताक्षर नहीं करवाए।

प्रार्थी के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी की साक्ष्य से यह स्पष्टतः प्रमाणित है कि दिनांक 26.07.1985 का समझौता बिना

अधिकार के किया गया है और यह भी कि श्रमिकों से स्वेच्छिक सेवानिवृत्ति प्रार्थना पत्र, भुगतान संबंधी रसीद आदि पर भुलावे में रखकर हस्ताक्षर करवाए गए हैं। उनका यह भी तर्क है कि उक्त समझौते पर हस्ताक्षर करने वाले पांच श्रमिकों का जिस दस्तावेज से अधिकृत होना विपक्षीगण बता रहे हैं, वह वर्ष 1983 का है, जबकि यह विवाद ही उस समय उत्पन्न नहीं हुआ था। उनका यह भी तर्क है कि वास्तविकता में उक्त कार्यवाही छँटनी की परिभाषा में आती है और यह छँटनी इस कारण अवैध एवं मनमानी है, क्योंकि धारा 25(G), 25(H), 25(N) औद्योगिक विवाद अधिनियम एवं इनके अन्तर्गत बने केन्द्रीय नियम 76, 76ए, 77, 78 की पालना नहीं की गई और समझौता दिनांक 19.05.1981, 26.07.1981 और 25.02.1985 की पालना नहीं की गई है। उक्त प्रावधानों के विपरीत की गई यह सेवा मुक्ति अनुचित श्रम व्यवहार की श्रेणी में आती है अपने तर्कों के समर्थन में निम्न विनिश्चय प्रस्तुत किए -

2015 (4) Supreme Court Cases 544

(Mackinnon Mackenzie & Company Limited Vs. Mackinnon employees Union)

2015 (5) Supreme Court Cases 786

(Durgapur Casual Workers Union & Others Vs Food Corporation of India & Others)

इसके विपरीत विपक्षी क्रम 1 के विद्वान प्रतिनिधि का तर्क है कि वास्तविकता में उक्त प्रार्थी श्रमिकगण द्वारा प्राधिकृत श्रमिकगण ने, समझौता अधिकारी के समक्ष समझौते की कार्यवाही लम्बित थी तब, दिनांक 26.07.1985 को एक समझौता किया और समझौते की पालना मेंस्वयं प्रार्थना पत्र प्रस्तुत कर स्वेच्छिक सेवानिवृत्ति चाही और समझौते के अधीन समस्त आर्थिक लाभ प्राप्त किए। जब प्रार्थी श्रमिकों की छँटनी ही नहीं हुई है तो धारा 25(G), 25(H), 25(N) औद्योगिक विवाद अधिनियम एवं इनके अन्तर्गत बने केन्द्रीय नियम 76, 76ए, 77, 78 की पालना का प्रश्न ही नहीं उठता है।

उनका यह भी तर्क है कि त्रिपक्षीय समझौते दिनांक 26.07.1985 को इस निर्देश के अन्तर्गत चुनौती नहीं दी जा सकती।

उनका यह भी तर्क है कि प्रार्थी की ओर से प्रस्तुत साक्षीगण के अतिरिक्त शपथ पत्र में स्वेच्छिक सेवानिवृत्ति प्रार्थना पत्र और रसीदों आदि पर भुलावे में रखकर हस्ताक्षर करने वाले कथन साक्ष्य में ग्राह्य नहीं हैं, क्योंकि ऐसे कोई अभिवचन प्रार्थीगण के, पत्रावली पर नहीं है।

मैंने तर्क वितर्क पर मनन किया।

प्रार्थीगण की ओर से साक्षीगण जो प्रस्तुत हुए हैं उन्होंने सभी ने अपने मुख्य कथन के शपथ पत्र में यह कहा है कि नियोजक द्वारा प्रस्तुत समझौता दिनांक 26.07.1985 बाध्यकारी नहीं है, क्योंकि इस पर जिन पांच श्रमिकों के हस्ताक्षर किए हैं, उन्हें, उन्होंने या उनके साथियों ने अधिकृत नहीं किया था। यह समझौता फर्जी, बनावटी और गैर कानूनी है। उन्होंने और उनके साथियों ने कभी भी स्वेच्छा से या स्वेच्छिक सेवानिवृत्ति नहीं चाही और न ही कोई त्याग पत्र प्रस्तुत किया था। अपने अतिरिक्त शपथ पत्र में इन साक्षीगण ने यह कहा

है कि स्वैच्छिक सेवानिवृत्ति के संबंध में जो प्रार्थना पत्र प्रस्तुत किए हैं, वे झूठे हैं तथा उक्त प्रार्थना पत्र पढ़कर नहीं सुनाए व भुलावे में रखकर उनके हस्ताक्षर करवाए हैं।

इन साक्षीगण का इस संबंध में मुख्य कथन में यह भी अभिकथन है कि उनकी सेवाएं दिनांक 30.07.1985 को समाप्त की गई, परन्तु सेवा समाप्त करने से पूर्व उन्हें एक माह का नोटिस, नोटिस वेतन एवं छुट्टी का मुआवजा नहीं दिया गया, और धारा 25(F) औद्योगिक विवाद अधिनियम के लाभ से वंचित करते हुए सेवा मुक्ति की गई है। उनकी छुट्टी से पूर्व भारत सरकार से अनुमति प्राप्त नहीं की गई।

इस संबंध में विपक्षी क्रम 1 की ओर से साक्षी आर. के. मेहता, मुख्य प्रबन्धक (कार्मिक व प्रशासन) राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर ने अपने मुख्य कथन में यह प्रकट किया है कि दिनांक 26 जुलाई, 1985 को श्रमिकों व ठेकेदार के बीच बातचीत चली और श्रमिकों के नामजद प्रतिनिधियों और मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के बीच समझौता हुआ। यह एक कन्सीलेशन समझौता था, जो प्रदर्श एम-91 है। इस समझौते के बाद श्रमिकों ने शर्त सहित स्वेच्छा से स्वैच्छिक सेवानिवृत्ति के प्रार्थना पत्र दिए, जो पत्रावली पर हैं। इसके बाद श्रमिकों ने प्रोविडेंट फण्ड के ट्रस्टी होने के कारण उनके संस्थान को पत्र देकर भविष्य निधि का पैसा मांगा। संस्थान के ट्रस्ट से, संबंधित श्रमिकों को, देय राशि का चैक दिया गया।

साक्षी एस. एस. शक्तावत ने भी अपने शपथ पत्र के मुख्य परीक्षण में भी यही कहा है कि श्रमिकों व ठेकेदार के बीच बातचीत होने के बाद दिनांक 26.07.1985 को श्रमिकों के नामजद प्रतिनिधियों और मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के प्रबन्धकों के बीच समझौता हुआ। यह त्रिपक्षीय समझौता था, जिस पर पांच कर्मचारियों के हस्ताक्षर हैं, जो श्रमिकों के प्रतिनिधि थे।

साक्षी एल.एल. चण्डालिया ने अपने मुख्य कथन के शपथ पत्र में प्रकट किया है कि वह राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर में सहायक लेखाधिकारी के पद पर नियुक्त थे। मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज और राजस्थान स्टेट माइन्स एण्ड मिनरल लि. के मध्य ओवर बर्डन हटाने की सविदा एम-92 हुई थी। श्रमिकों की नियुक्ति ठेकेदार द्वारा की जाती थी। भविष्य निधि एक्ट, 1952 के प्रावधानों के अनुसार ठेकेदार के पास कार्यरत श्रमिकों के वेतन से भी भविष्य निधि की राशि ठेकेदार द्वारा काट ली जाती थी। मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के निवेदन पर उनके श्रमिकों के भविष्य निधि अंशदान की राशि और नियुक्ता ठेकेदार का अंशदान राजस्थान स्टेट माइन्स एण्ड मिनरल लि. के भविष्य निधि ट्रस्ट में हर माह ठेकेदार मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज द्वारा जमा करवा दी जाती थी।

इस साक्षी का कथन है कि दिनांक 26.07.1985 को श्रमिकों के नामजद प्रतिनिधि और मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के प्रबन्धक के बीच समझौता प्रदर्श एम-91 हुआ था। इसके पश्चात् मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के श्रमिकों से प्रार्थना पत्र प्राप्त हुए कि उन्होंने समझौते के अन्तर्गत मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज से स्वेच्छिक सेवानिवृत्ति ले ली अतः जमा भविष्य निधि की राशि लौटाई जाये। इस पर मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज द्वारा भेजे

गए पत्रों और प्रमाणीकरण के आधार पर जरूरी औपचारिकताएं पूरी करके मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के उक्त श्रमिकों को भविष्य निधि की राशि का एकाउण्ट पेई चैक से भुगतान कर रसीद प्राप्त कर ली गई थी।

मैंने उक्त साक्षीगण के ऊपर वर्णित कथनों का ध्यानपूर्वक अध्ययन किया।

प्रार्थीगण की ओर से जो साक्षी प्रस्तुत हुए हैं उन सभी ने अपने मुख्य कथन में दिनांक 26-7-1985 का समझौता अविधिपूर्ण होना और अनधिकृत व्यक्तियों द्वारा हस्ताक्षरित होना कहा है। प्रतिपरीक्षा में साक्षीगण ने अपने मुख्य कथन से विपरित यह कहा है कि उन्हें तो इस बात की जानकारी ही नहीं कि दिनांक 26-7-85 को कोई समझौता हुआ या नहीं। इस संबंध में साक्षी उमेश, लिम्बा, रमजान, दलीचंद, शंकर लक्ष्मणसिंह आदि ने अपनी प्रतिपरीक्षा में इस दस्तावेज की जानकारी ही नहीं होना प्रकट किया है। साक्षी मनोहर ने अपनी प्रतिपरीक्षा में यह कहा है कि उसे इस समझौते की जानकारी है और यह कहा है कि इस समझौते के बाद में पैसे लिए थे। अधिकांश श्रमिकगण जो कि साक्ष्य में आए हैं, उन्होंने इस समझौते की जानकारी होने से ही इन्कार कर दिया है। उक्त परीक्षित साक्षीगण में से कुछ ने तो अपने मुख्य कथन के शपथ पत्र में क्या तथ्य अंकित है, इसकी जानकारी होने से भी इन्कार किया है।

अपने मुख्य कथन के शपथ पत्र में उक्त सभी साक्षीगण ने दिनांक 26.07.1985 के समझौते के संबंध में यह कथन किया है कि यह समझौता जिन पांच व्यक्तियों के हस्ताक्षरों से किया गया इस हेतु उसने या उनके साथियों ने उन्हे अधिकृत नहीं किया था। साथ ही इन सभी साक्षीगण ने लेख पत्र प्रदर्श एम 2/2 पर अपने हस्ताक्षर होना स्वीकारा है। प्रदर्श एम-2/2 दिनांक 15.03.1983 का वह प्रपत्र है, जिसमें उक्त समझौता करने वाले पांच श्रमिकों को, संस्थान में नियुक्त श्रमिकों ने ठेकेदार से विवाद होने पर कार्यवाही का अधिकार दिया है। ऐसी स्थिति में इन साक्षीगण का कथन कि उनके द्वारा दिनांक 26.07.1985 पर हस्ताक्षर करने वाले श्रमिकों को अधिकृत नहीं किया गया था, सही नहीं है।

प्रार्थी की ओर से प्रस्तुत साक्षीगण जिनका ऊपर विवरण दिया हुआ है, ने स्वेच्छिक सेवानिवृत्ति संबंधी संयुक्त प्रार्थना पत्र प्रदर्श एम-2/1 पर अपने हस्ताक्षर होना स्वीकार किया है। उक्त साक्षीगण ने स्वैच्छिक सेवानिवृत्ति के व्यक्तिगत रूप से दिए गए प्रार्थना पत्रों में उमेश सिंह प्रदर्श एम-7, लिम्बा प्रदर्श एम-12, मनोहर लाल प्रदर्श एम-2 दौलत सिंह प्रदर्श डबल्यू-7/4, भैरा प्रदर्श डबल्यू-5/3, मोती प्रदर्श एम-28, नाथू प्रदर्श एम-23, चैना प्रदर्श एम-38, शंकर प्रदर्श एम-33, उदीलाल प्रदर्श एम-42, अब्दुल रहमान प्रदर्श एम-78, कैरिंग लाल प्रदर्श एम-82 एवं दूलीचंद प्रदर्श एम-88 पर भी अपने हस्ताक्षर होना स्वीकारा है। अपने अतिरिक्त शपथ पत्र में उक्त साक्षीगण ने यह कहने का प्रयास किया है कि उनसे इन दस्तावेजों पर भुलावे में रखकर हस्ताक्षर करवा लिए गए, परन्तु इस संबंध में प्रार्थी श्रमिकगण के अभिवचन ही पत्रावली पर नहीं हैं। वैसे भी इन साक्षीगण ने उक्त स्वैच्छिक सेवानिवृत्ति के प्रार्थना पत्रों के बाद

समझौते के अन्तर्गत आर्थिक लाभ प्राप्त करना स्वीकार किया है। ऐसी स्थिति में यह कहना कि वे भुलावे में रहे, कतई स्वीकार करने योग्य नहीं है। एक से अधिक स्थानों पर हस्ताक्षर करके साक्षीगण ने चैतन्य रूप से उक्त राशि को स्वीकार किया है। साथ ही इन साक्षीगण ने विपक्षी क्रम 2 मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज को पी.एफ. की राशि दिलवाए जाने के लिए भी प्रार्थना पत्र देकर निवेदन किया। उक्त प्रार्थना पत्र मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के माध्यम से इस हेतु विपक्षी क्रम 1 राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर के पी.एफ. हेतु बने ट्रस्ट में भिजवाए गए और वहां से प्रार्थी श्रमिकगण ने पी.एफ. की राशि का भुगतान प्राप्त किया है। ऐसी स्थिति में पश्चात्तुर्ती प्रक्रम पर आकर यह कह देना कि उन्हें जानकारी नहीं थी या उन्हें भुलावे में रखकर हस्ताक्षर करवाए गए, सही नहीं माना जा सकता।

यहां यह भी उल्लेखनीय है कि इन साक्षीगण ने लेख पत्र दिनांक 15-3-1983 प्रदर्श एम-2/2 पर भी अपने हस्ताक्षर को स्वीकारा है। यह वह लेख पत्र है, जिसके द्वारा उक्त श्रमिकगण ने अपने में से पांच श्रमिकों प्रतापसिंह, टीकेसिंह, भंवरसिंह, जगदीश एवं जवान सिंह को प्रबन्धन से विचार-विमर्श कर निर्णय लेने हेतु चयनित कर प्राधिकृत किया था। इन्हीं पांच व्यक्तियों द्वारा दिनांक 26-7-1985 का समझौता जो समझौता अधिकारी के समक्ष हुआ है, हस्ताक्षरित किया गया है। औद्योगिक विवाद अधिनियम के अन्तर्गत बनाए गए नियमों के नियम 58 (2) (ख) में ऐसे प्राधिकृत प्रतिनिधिगण द्वारा समझौता किया जा सकता है।

जहां तक श्रमिकगण के विद्वान प्रतिनिधि के इस तर्क का संबंध है कि उक्त लेख पत्र वर्ष 1983 का है, जबकि समझौता दिनांक 26-7-1985 को किया गया है यही कहा जा सकता है कि उक्त प्राधिकृत करने वाला प्रस्ताव कभी वापस ले लिया गया हो, ऐसा अभिलेख से प्रकट नहीं हो रहा है, न ही श्रमिकगण द्वारा प्रमाणित ही किया गया है। ऐसी स्थिति में प्रार्थीगण का यह अभिकथन कि दिनांक 26-7-1985 का समझौता अप्राधिकृत व्यक्तियों द्वारा किए जाने के कारण अवैध है, नहीं माना जा सकता।

यहां यह विशेष रूप से उल्लेखनीय है कि दिनांक 26-7-1985 का समझौता सुलह अधिकारी के समक्ष किया गया एक त्रिपक्षीय समझौता है और इस समझौते का एक हस्ताक्षरकर्ता सहायक लेबर कमिश्नर केन्द्रीय भी है, जो एक लोक सेवक है। इस लोक सेवक पर षडयंत्र कर, समझौता अभिलिखित करने का आक्षेप नहीं स्वीकारा जा सकता है। वैसे भी श्रमिकगण ने यह नहीं बताया है कि समझौता अधिकारी की क्या दुर्भावना अथवा स्वार्थ इस संबंध में हो सकता था।

उक्त समझौता दिनांक 26-7-1985 समझौता सुलह अधिकारी के समक्ष किया गया एक त्रिपक्षीय समझौता है, और इसकी वैधता को, और यह सद्भावनापूर्वक है या नहीं को एक स्वतंत्र निर्देश में ही निर्णीत किया जा सकता है जैसा कि माननीय उच्चतम न्यायालय ने अपने विनिश्चय 2005 (8) एस.सी.सी. पेज 49 में प्रतिपादित किया है।

उपर्युक्त विवेचन अनुसार जो साक्ष्य प्रत्रावली पर मौजूद है, उससे यही प्रमाणित होता है कि प्रार्थी श्रमिकगण की छंटनी नहीं की गई वरन श्रमिकों द्वारा स्वेच्छया सेवानिवृत्ति ली गई है। जब श्रमिकों की छंटनी ही नहीं की गई है तो फिर धारा 25 औद्योगिक विवाद अधिनियम के विभिन्न प्रावधानों की पालना नहीं करने से संबंधित प्रार्थी श्रमिकगण के विद्वान प्रतिनिधि के तर्क सारहीन हो जाते हैं, क्योंकि स्वैच्छिक सेवानिवृत्ति धारा 2 (oo) के अन्तर्गत छंटनी की श्रेणी में नहीं आती है।

जब प्रार्थी श्रमिकगण की छंटनी किया जाना ही प्रमाणित नहीं है तथा यह प्रमाणित है कि उनके द्वारा स्वेच्छिक सेवानिवृत्ति ली गई है तो ऐसी स्थिति में धारा 25 (F) औद्योगिक विवाद अधिनियम की पालना और सरकार की पूर्व अनुमति लेने का कोई प्रश्न ही उत्पन्न नहीं होता है।

जैसा कि ऊपर विवेचन किया गया है कि समझौता दिनांक 26-7-1985 सुलह अधिकारी के समक्ष किया गया त्रिपक्षीय समझौता है, और इसकी वैधता के संबंध में कोई विवाद उठाया जाना और इसकी वैधता के संबंध में निर्देश होना नहीं पाया जाता है, ऐसी स्थिति में प्रार्थी को समझौते की वैधता को चुनौती देने का अधिकार नहीं है। इस संबंध में अधिकरण द्वारा जो विवेचन किया गया है, वह इसी परिपेक्ष्य में किया गया है कि प्रार्थी श्रमिकगण की छंटनी की गई अथवा उनके द्वारा स्वैच्छिक सेवानिवृत्ति, ली गई इसी प्रकार से उक्त विवादकों का निर्णय किया जाता है।

विवादक संख्या 4:-

प्रार्थी संघ ने अपने स्टेटमेंट ऑफ क्लेम में यह अभिकथित किया है कि प्रार्थी मैसर्स राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर संघ है, जिसके झामर कोटडा खदानों पर कार्य करने वाले श्रमिक सदस्य हैं। इसके जवाब में विपक्षी क्रम 1 ने यह अभिकथित किया है कि प्रार्थी संघ पंजीकृत संघ अवश्य है, परन्तु उन्हें यह स्वीकार नहीं है कि झामर कोटडा खदानों पर कार्य करने वाले श्रमिक इस संघ के सदस्य हैं। इस संघ का मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के संस्थान में भी कोई अस्तित्व नहीं है, इसलिए इस संघ को श्रमिकों की ओर से यह वाद प्रस्तुत करने का अधिकार नहीं है। श्रमिकों ने संघ को कोई अधिकार नहीं दिया और न ही वाद उठाने का प्रस्ताव पारित कर अधिकृत किया है।

विपक्षी क्रम 1 के उक्त अभिकथनों का उत्तर प्रार्थी श्रमिकगण ने प्रस्तुत किया और अपने प्रतिउत्तर में इस संबंध में अभिकथित किया है कि विपक्षी ने रॉक फॉस्फेट मजदूर संघ को गलत व राजनैतिक आधार पर मान्यता दे रखी है, और मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज संस्थान में प्रार्थी यूनियन के अस्तित्व से इन्कार करने की बात उन्हें अस्वीकार है।

विपक्षी क्रम 2 ने भी अपने उत्तर में प्रार्थी संघ का अपने संस्थान में अस्तित्व होने से इन्कार किया है और यही आपत्ति ली है कि उन्हें श्रमिकों की ओर से वाद उठाने का अधिकार नहीं है।

यह तथ्य प्रार्थी संघ को प्रमाणित करना था कि वह मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज में मान्यता प्राप्त संघ है और उक्त 137 श्रमिकगण की ओर से वाद उठाने और लाने का अधिकार रखते हैं। प्रार्थी संघ ने ऐसा कोई लेखपत्र प्रस्तुत नहीं किया है, जिससे यह प्रकट होता हो कि उन्हें उक्त श्रमिकों ने वाद उठाने हेतु प्राधिकृत किया हो अथवा वे उक्त संस्थान में मान्यता प्राप्त श्रमिक संघ थे।

प्रार्थी की ओर से संघ के अध्यक्ष महेन्द्र खमेसरा दिनांक 13-5-1988 को उपस्थित हुए हैं, परन्तु उन्होंने अपने मुख्य बयान के शपथ पत्र में यह नहीं कहा है कि इस संघ को उक्त श्रमिकों ने वाद उठाने के लिए अधिकृत किया था।

प्रार्थी श्रमिकगण की ओर से ऐसा कोई साक्षी भी प्रस्तुत नहीं हुआ है, जिसने उक्त यूनियन को वाद उठाने का अधिकार दिया जाना कहा हो। साक्षी मनोहर लाल ने इस संबंध में यह कथन किया है कि उन्होंने महेन्द्र खमेसरा अध्यक्ष को लिखकर दिया था कि उनका मामला उठाएं, परन्तु ऐसा कोई लेख पत्र व प्रस्ताव प्रार्थी संघ की ओर से साक्ष्य में प्रस्तुत नहीं किया गया है। अन्य किसी साक्षी ने राजस्थान स्टेट माइन्स एण्ड मिनरल कर्मचारी संघ उदयपुर (प्रार्थी संघ) को उक्त वाद उठाने के लिए प्राधिकृत किया जाना प्रकट नहीं किया है।

ऐसी स्थिति में साक्ष्य से यह प्रमाणित नहीं है कि प्रार्थी राजस्थान स्टेट माइन्स एण्ड मिनरल कर्मचारी संघ उदयपुर को मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज के श्रमिकों की ओर से वाद उठाने का अधिकार प्राप्त हो। जब स्थिति यह है तो यही माना जावेगा कि यह वाद, उपस्थित श्रमिकगण द्वारा अपनी व्यक्तिगत क्षमता में प्रस्तुत कर चलाया गया है। इसी प्रकार यह विवादक निर्णित किया जाता है।

विवादक संख्या 12:-

प्रार्थी श्रमिकगण ने अपने स्टेटमेंट ऑफ क्लेम में यह अधिकथित किया है कि विपक्षी क्रम 2 ने उन्हें नियोजित किया था और उसके बाद दुर्भावनापूर्वक उनकी छँटनी कर दी।

इसका विपक्षी क्रम 2 की ओर से यह उत्तर प्रस्तुत किया गया कि वास्तविकता में श्रमिकगण की छँटनी नहीं की गई वरन उन्होंने स्वेच्छिक सेवानिवृत्ति प्राप्त की है।

इस संबंध में विवाद को सुलह अधिकारी के समक्ष उठाया गया और सुलह प्रक्रिया असफल होने पर धारा 10 औद्योगिक विवाद अधिनियम के प्रावधानों के अन्तर्गत समुचित सरकार ने न्यायाधिकरण को उक्त निर्देश प्रेषित किया है।

औद्योगिक विवाद अधिनियम की धारा 2 (k) में औद्योगिक विवाद परिभाषित है। इसके अन्तर्गत नियोजक और कर्मकारों के मध्य ऐसे विवाद जो कि नियोजन अथवा अनियोजन या नियोजन से संबंधित शर्तों के संबंध में ही अथवा औद्योगिक विवाद की श्रेणी में आता है। इस अधिनियम की तीसरी अनुसूची में कर्मकारों की छँटनी

से संबंधित प्रकरण औद्योगिक विवाद के अन्तर्गत आना और इनके संबंध में औद्योगिक न्यायाधिकरण को श्रेत्राधिकार होना अंकित है।

प्रार्थी श्रमिकगण ने विपक्षी क्रम 2 द्वारा स्वयं की छँटनी अवैध बताते हुए विवाद उठाया है व उसी के संबंध में यह निर्देश प्राप्त हुआ है। ऐसी स्थिति में मेरे विचार से वर्तमान विवाद नियोजक और कर्मकारों के मध्य नियोजन से संबंधित है और औद्योगिक विवाद की श्रेणी में आता है और औद्योगिक विवाद अधिनियम की धारा 10 के अन्तर्गत इस औद्योगिक विवाद का निर्देश इसी रूप में इस न्यायाधिकरण में चलने योग्य है। इसी प्रकार से इस विवादक का निर्णय किया जाता है।

अधिकरण द्वारा निर्धारित उक्त विवाद बिन्दुओं के संबंध में जो निष्कर्ष निकाले गए हैं, उन्हें अब इस अधिकरण को किए गए निर्देश के परिपेक्ष्य में देखना है।

जैसा कि ऊपर निवेदन किया गया है कि प्रार्थी श्रमिकगण का विपक्षी क्रम 2 का श्रमिक होना प्रमाणित हुआ है और यह प्रमाणित हुआ है कि वे विपक्षी क्रम 1 के श्रमिक नहीं थे और उनका नियोजन विपक्षी क्रम 2 द्वारा किया गया था और यह भी प्रमाणित हुआ है कि उक्त श्रमिकगण की विपक्षी क्रम 2 द्वारा छँटनी नहीं की गई है वरन उनके द्वारा स्वेच्छिक सेवानिवृत्ति ली गई है। यह भी प्रमाणित पाया गया है कि दिनांक 19-05-1981 का लेखपत्र समझौते की परिभाषा में नहीं आता है और विपक्षी क्रम 1 पर किसी प्रकार का कोई उत्तर दायित्व इसके अन्तर्गत नहीं है।

ऐसी स्थिति में प्रार्थी श्रमिकगण किसी प्रकार का कोई अनुतोष विपक्षी क्रम 1 के विरुद्ध प्राप्त करने के अधिकारी नहीं रहते हैं।

उल्लेखनीय है कि विपक्षी क्रम 2 से तो किसी प्रकार का कोई अनुतोष प्रार्थी श्रमिकगण ने अब चाहा ही नहीं है।

जैसा कि ऊपर निवेदन किया गया है विपक्षी क्रम-1 का किसी प्रकार का कोई दायित्व प्रार्थी श्रमिकगण को अपनी सेवा में लेने का नहीं है और प्रार्थीगण को कोई अधिकार विपक्षी क्रम-1 के नियोजन के लिए जाने का नहीं है। ऐसी स्थिति में प्रार्थी श्रमिकगण किसी प्रकार का कोई अनुतोष प्राप्त करने के अधिकारी नहीं हैं। उनका स्टेटमेंट ऑफ क्लेम निरस्तनीय है।

अतः उपर्युक्त विवेचन के आधार पर केन्द्र सरकार से प्राप्त विवाद के निर्देश में निम्न अवार्ड पारित किया जाता है-

अवार्ड

मैसर्स ईस्टर्न इंजीनियरिंग एन्टरप्राइजेज उदयपुर, ठेकेदार मैसर्स राजस्थान स्टेट माइन्स एण्ड मिनरल लि. उदयपुर (सरकार का उपक्रम) के प्रबन्धन का 137 श्रमिकों की दिनांक 30-07-1985 से सेवामुक्ति का कृत्य उचित एवं विधिपूर्ण है, और संबंधित कर्मकार इस संबंध में कोई अनुतोष प्राप्त करने अधिकारी नहीं है।

शुभा मेहता, न्यायाधीश

नई दिल्ली, 11 फरवरी, 2016

का.आ. 307.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डालमिया मैग्नेसाइट कार्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 89/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-27011/2/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 11th February, 2016

S.O. 307.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2015) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Dalmia Magnesite Corporation and their workmen, which was received by the Central Government on 10.02.2016.

[No. L-27011/2/2015-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Wednesday, the 20th January, 2016

Present :

K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 89/2015

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Dalmia Magnesite Corporation and their workman]

BETWEEN:

The General Secretary : 1st Party/Petitioner
Salem Distt. Magnesite Union
Labour Union, 237,
Tharamangalam Road
Old Suramangalam
Salem-630012

AND

The General Manager : 2nd Party/Respondent
Dalmia Magnesite Corporation
(Prop: Dalmia Bharat Sugar and

Industries Ltd.)
Vellakkalpatti, Karuppur Post
Salem-636012

Appearance:

For the 1st Party/ : M/s N. Ajoy Khose, Advocates
Petitioner Union

For the 2nd Party/ : M/s T. Poornam, Advocates
Respondent

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-27011/2/2015-IR (M) dated 09.06.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the Management of M/s Dalmia Magnesite Corporation in not extending the benefit of Section-18(1) settlement to the Petitioner Union but the settlement was signed by other union is justifiable or not? If not, to what relief the members of the Union are entitled?

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 89/2015 and issued notices to both sides. Both sides entered appearance and filed claim and counter statement respectively.

3. On completion of steps in the dispute the matter has been posted for enquiry. In the meanwhile the petitioner has filed a memo seeking to close the dispute as not pressed. It is stated in the memo that the dispute has been settled and the Management had agreed to pay arrears of wages for the concerned workmen. It is on account of this settlement the petitioner sought to close the dispute. In view of the memo, the matter has to be disposed without any adjudication on merits. In the absence of the petitioner proceeding with the dispute an award is passed against the petitioner.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ : None
Petitioner Union

For the 2nd Party/ : None
Management

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
	Nil	

On the Respondent's side

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 11 फरवरी, 2016

का.आ. 308.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 73/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-30012/16/2014-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 11th February, 2016

S.O. 308.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 73/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. India Oil Corporation Ltd. and Other and their workman, which was received by the Central Government on 10.02.2016.

[No. L-30012/16/2014-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Friday, the 29th January, 2016

Present :

K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 73/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Oil Corporation and Another and their workman]

BETWEEN:

Sri P. Munusamy : 1st Party/Petitioner

AND

1. The Plant Manager : 2nd Party/1st Respondent
IOCL, LPG Bottling Plant
SIPCOT, Perundurai
Erode
2. The Partner : 2nd Party/2nd Respondent
M/s ASK Agencies,
Hotel Srimurugan Building
56, Devi & Co., Lane
Coimbatore -641018

Appearance:

For the 1st Party/ : M/s V. Ajoy Khose, Advocates
Petitioner

For the 2nd Party/ : M/s T.S. Gopalan & Co.,
1st Respondent Advocates

For the 2nd Party/ : Sri R. Shivakumar, Authorized
2nd Respondent Representative

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-30012/16/2014-IR (M) dated 02.09.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of M/s ASK Agencies, Coimbatore, Contractor of Indian Oil Corporation Ltd., Perundurai, Erode District in terminating the services of Sri P. Munusamy is legal and justified? If not, to what relief the workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 73/2014 and issued notices to both sides. On receipt of notice the petitioner and the First Respondent have entered appearance through their counsel and the Second Respondent through the Authorized representative and have filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner are as below:

The LPG Bottling Plant at Sipcot, Perundurai belonging to the First Respondent was working in two shifts. Apart from permanent workers, the First Respondent is employing workmen in the name of contract labourers through Contractors who are name lenders. The so-called contract labourers were involved in production alongwith permanent workers. Originally, one Saveria Pichai was appointed as Contractor by the First Respondent. After 31.03.2003 the Second respondent was appointed as the Contractor and is continuing as such. The petitioner had contested election for the delegates to IOCEU and had succeeded in the election and was elected as one of the delegates. This was not liked by the Secretary of the IOEU. The petitioner had questioned the Second Respondent as to why the contract labourers who were actually reporting for work on all working days and carrying out work were issued with memo as if they failed to report for work. The petitioner has also questioned the First Respondent for not providing work to all the workmen. This was not liked by the Second Respondent. In November, 2008 as instigated by the Second Respondent, one Nanda Kumar attacked the petitioner. He was not able to report for work for a week after this incident. The Second

Respondent came to the house of the petitioner and forcibly obtained signature from the petitioner immediately after the incident of assault and it was written as if the petitioner has resigned his job. The petitioner did not give any such letter on his own. Since the incident was known to all the workers, the petitioner was allowed to join duty and he continued to report for work as usual. In the meantime the petitioner had asked for loan from the provident Fund. The Second Respondent obtained signature of the petitioner in some forms and blank papers on the pretext of getting PF loan. On 01.04.2009 the Second Respondent stopped the petitioner from work without any notice and without any reason. Even though the petitioner requested for work the Second Respondent did not give any reply and did not permit him to work also. The petitioner has put in more than 7 years of continuous service and has completed more than 240 days of service in each year preceding the date of termination on 01.04.2009. The petitioner has not been paid any compensation as contemplated under Section-25F of the ID Act also. Others who joined subsequent to the petitioner are retained in service so termination of the petitioner from service is in violation of Section-25G of the ID Act also. New workers were employed after the petitioner was terminated and therefore there is violation of Section-25H of the ID Act also. An order may be passed holding that the action of the Second Respondent in terminating the service of the petitioner is illegal and also directing the Respondents to reinstate the petitioner in service with backwages and other benefits.

4. The First Respondent has filed Counter Statement contending as below:

The petitioner was admittedly engaged as contract labourer by the Second Respondent. The First Respondent has registered itself as a principal employer under the CLRA Act. The Second Respondent was awarded contract for attending different types of works. The petitioner is not entitled to any relief.

5. The Second Respondent has filed Counter Statement contending as below:

The contract workers under the Second Respondent have no involvement in the production process of the First Respondent. It is carried out by the employees of the First Respondent. The petitioner was engaged by the Second Respondent from 01.04.2003 and continued till he resigned from his job on 01.09.2009. The petitioner has no locus-standi to file the petition as he was no longer an employee of the Second Respondent as he left his services on 01.09.2009. The petitioner used to be absent from work continuously. A show cause notice was issued to him on 22.01.2008 regarding his absence and he has submitted his explanation. Though his explanation was not satisfactory he was permitted to continue in employment on humanitarian grounds. The petitioner was again served

with Show Cause Notice on 27.09.2008 for absents for a total period of 40 days from January 2008 to August 2008. It is incorrect to state that the signature of the petitioner was obtained in blank white papers and certain forms. Though the petitioner remained absent from 01.04.2009 he resigned from his job on 06.04.2009 only so he was relieved from 01.04.2009. After resigning from job the petitioner did not approach the Second Respondent to permit him to work. The petitioner is not entitled to any relief.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W12 and Ext.M1 to Ext.M16.

7. The points for consideration are :

- (i) Whether the action of the Second Respondent in terminating the service of the petitioner is justified?
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner had been working as a contract labourer for the First Respondent under the Second Respondent. It is alleged by the petitioner that because of his union activities and his questioning the malpractices of the second Respondent he was stopped from work on 01.04.2009, which according to him is without any justification. It is accordingly he is seeking reinstatement in the service of the Second Respondent, though, direction is sought against the First Respondent as well.

9. The case of the second Respondent is that the petitioner had resigned from service on 06.04.2009 and there was no employer-employee relationship between them thereafter. According to the Second Respondent, the petitioner is not entitled to any relief since he had voluntarily resigned from service.

10. Though the First Respondent, the principal employer is made a party to the proceedings, there is no case for the petitioner that he was under the direct employment of the First Respondent. He has specifically stated during his cross-examination that he was terminated by the Second Respondent and he is claiming relief against the Second Respondent only.

11. The question to be considered is whether the petitioner is entitled to be reinstated in the service of the Second Respondent. It is admitted by the second Respondent that the petitioner was in its service from 01.04.2003 and continued to be in service till 01.04.2009. However, according to the second Respondent, though the petitioner continued in service he was never able to complete more than 240 days of work in any 12 calendar months. It is the further case of the second Respondent that the petitioner has resigned from his job on 06.04.2009 which has come to effect from 01.04.2009 from which date he has been absents from work.

12. The Second Respondent has been relying upon Ext.M11, Exts.M3, Ext.M4 and Ext.M13 to Ext.M16 to substantiate the case that the petitioner has resigned from service and it is not a case of termination of the petitioner from service. Ext.M11 is a resignation letter dated 06.04.2009 said to have been signed by the petitioner. The case of the petitioner during his examination is that signature contained in Ext.M11 is not his at all. However, the case in the Claim Statement is something different. What he has stated in the Claim Statement is that the Second Respondent came to his house and forcibly obtained signature immediately after 11.11.2008 on which date there was some attack on him by a co-worker and it was written in the paper in which he was made to sign that he has resigned his job. He has further stated that he did not give the said letter on his own. So the case of the petitioner that Ext.M11 does not contain his signature cannot be accepted because of the very statement in the Claim Statement that he was made to sign a letter resigning his job.

13. So far as the case that the petitioner was made to put his signature in the resignation letter by force is concerned, this is not supported by any acceptable evidence. There is only the contradictory statements made by the petitioner in this respect. The Second Respondent is described as the partner of M/s ASK AGENCIES in the Claim statement. The petitioner has not stated who is the partner who reached his house on 11.11.2008 to get his signature by force. He has not stated how force was exerted on him on the day. He has also not stated who all were present when his signature was obtained. Why should the petitioner put his signature in a resignation letter if he does not want to and that too from his own house?

14. According to the Second Respondent the petitioner has submitted his application to the Provident Fund authorities for his Provident Fund dues after he resigned from his job and the amount has been remitted to his account also. MW1 has stated that the applications were forwarded to the Provident Fund authorities from his office. The petitioner has stated during his cross-examination that Exts.M3 and Ext.M4 are the claim submitted by him to the Provident Fund Organization. Ext.M3 is a claim in Form No. 19 and Ext.M4 is in Form-10C of the Provident Fund Act. The details of the Ration Card and Bank account are also required for claiming Provident Fund dues. The petitioner has stated during his cross-examination that he had furnished these details to the Provident Fund authorities. Ext.M13 is the details of the bank account of the petitioner and Ext.M14 is a copy of the first page of Ration Card of the petitioner. It is pointed out on behalf of the Second Respondent that these details must have been furnished by the petitioner only because he was aware that he is claiming Provident Fund dues from the authorities consequent to his resignation from

the Second Respondent establishment. This argument has force. Unless these were submitted by the petitioner it would not have been possible for the Second Respondent to forward the claim. There is no case for the petitioner that the details were obtained from him by force or fraud. There is no specific case also that his signatures in Ext.M3 and Ext.M4 were obtained by force. So the case that a resignation letter was obtained from the petitioner by force is not substantiated by any evidence. Ext.M11 is to be accepted as the resignation letter from the petitioner consequent to which he had applied for his Provident Fund dues.

15. There is one more aspect which probabalizes the case that the petitioner had resigned from his job. The Provident Fund dues reached the account of the petitioner on 29.01.2010. If the case of the petitioner that his signature was obtained by force in the resignation letter is true he would have known when the Provident Fund dues came to his account on 29.01.2010 itself that he was cheated by the Second Respondent. However, the petitioner has not done anything immediately after 29.01.2010. On the other hand, he waited till 2013 to raise the dispute. Ext.W5, the copy of the petition filed by the petitioner before the Asstt Labour Commissioner, Madurai does not contain any date. However, Ext.W6 the reply by the Second Respondent bears the date 18.04.2013. If the petitioner was actually cheated he would not have slept over his right for such a long time. The only probability is that the petitioner had resigned and consequently he had claimed his Provident Fund dues and collected the dues that was remitted to his account and was satisfied with the same. The present dispute seems to be the result of an afterthought.

16. It is the contention of the Second Respondent that in any case the petitioner had never completed 240 days of work in any calendar year and he had not completed these days immediately preceding the date of his alleged termination also. Even as seen from the documents produced by the petitioner he seems to have been unauthorizedly absenting himself from work. Ext.W1 is the Show Cause Notice issued by the Second Respondent to the petitioner in January 2008 and Ext.W2 is the explanation given by him. As seen from Ext.W1 the petitioner was absent without prior intimation between September and December 2007. In Ext.W2 he has stated that he was out of station for medical facilities and was not able to attend his duties properly. Ext.M8 is another Show Cause Notice dated 27.09.2008 showing absence of petitioner without intimation for 40 days during the period from January to August 2008. By Ext.W8 the petitioner has explained that he has taken leave because of illness. In his resignation letter what the petitioner has stated is that he is unable to continue his work because of his illness. Ext.M16 is the service particulars submitted by the Second Respondent to the Provident Fund Organization along with the claim for Provident Fund dues. The days of

absence of the petitioner are given in this. If considered along with Exts.M8 and Ext.M9 it could be seen that the particulars furnished as per Ext.M16 must be correct at least in respect of the year preceding the date of his termination. Of course there is the fact that the second Respondent has not produced the muster roll or attendance register to show the number of days for which the petitioner had worked during the period. But the petitioner did not make a request to have the documents produced. The petitioner did not adduce any evidence also to show that he was in continuous service and had worked for more than 240 days in the 12 months preceding the date of his termination and also in the previous years and he is eligible for the benefit under Section-25F of the ID Act. Ext.M16 and other documents produced on behalf of the Second Respondents are to be considered in this background. The available documents would show that the petitioner has not completed 240 days of work in the 12 months preceding the date of his termination. So even assuming that the petitioner has been terminated from service it could not be termed as one in violation of Section-25F of the Act. For this reason also the petitioner will not be entitled to any relief.

In view of my discussion above, I find that the petitioner is not entitled to any relief. The reference is answered against the petitioner. An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ : WW1, Sri P. Munusamy
Petitioner

For the 2nd Party/ : MW1, Sri S. Kannusamy
Respondent

Documents Marked:

On the Petitioner's side

Ext.No.	Date	Description
Ext.W1	22.01.2008	Show Cause Notice issued by the II Party to the I Party
Ext.W2	29.01.2008	Explanation given by the I Party
Ext.W3	08.11.2008	Medical Certificate of the I Party
Ext.W4	11.11.2008	Letter given by the I Party to the II Party
Ext.W5	-	2(A) Petition filed by the I Party before the ALC (C), Madurai
Ext.W6	08.04.2013	Reply of the II Party filed before the ALC
Ext.W7	22.07.2013	Rejoinder filed by the I Party
Ext.W8	23.09.2013	Reply Statement filed by the II Party

Ext.W9	31.05.2014	Failure Report
Ext.W10	02.09.2014	Order of Reference
Ext.W11	-	Wage slip of the I Party
Ext.W12	-	Identity Card and EPF Account Slip of the I Party

On the Management's side

Ext.No.	Date	Description
Ext.M1	31.07.2013	Licence issued by Licensing Officer – ALC © Madurai to ASK Agencies – covering the period from 30.07.2005 and periodically up to 30.07.2012 (3 sheets)
Ext.M2	06.01.2006	Letter from ALC(C) Chennai under Reference No. M/46/24/99-D4/B2 dated 06.01.2006 enclosing copy of the letter u/r reference No. M/46(24)/99-I/D4 dated 05.07.1999, copy of Form-II M.46(24)/99-D4/I under Registration No. RI/10/99 dated 05.07.1999
Ext.M3	-	P. Munusamy's claim in Form No. 19 submitted to the PF Organization
Ext.M4	-	P. Munusamy's claim in Form No. 10C submitted to the P.F. Organization
Ext.M5	-	Letter of P. Munusamy to the Respondent II for his misconduct in his employment dated 02.05.2008
Ext.M6	-	Show Cause Notice issued to P. Munusamy dated 22.01.2008 for his absence from September to December 2007
Ext.M7	-	P. Munusamy's reply to the above show cause notice dated 29.01.2008
Ext.M8	-	Show Cause Notice dated 27.09.2008 issued to P. Munusamy for his absence from January to August 2008
Ext.M9	-	P. Munusamy's reply dated 30.09.2008 for the above notice
Ext.M10	-	Show Cause Notice dated 30.12.2008 issued to P. Munusamy for this misconduct in his work
Ext.M11	-	P. Munusamy/s resignation letter dated 06.04.2009

Ext.M12	-	Letter of Respondent II to the Respondent I seeking permission to replace the vacancy caused by Munusamy's resignation dated 14.05.2009
Ext.M13	-	Munusamy's Bank of Baroda Account details
Ext.M14	-	Munusamy's Ration Card first page
Ext.M15	-	Form No. 3-A submitted in respect of P. Munusamy to the P. F. Organization by the Respondent-II for the years 2007-08, 2008-09
Ext.M16	-	Service particulars submitted to the P.F. Organization by the Respondent II from 01.02.2002 to 31.03.2008.

नई दिल्ली, 11 फरवरी, 2016

का.आ. 309.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 71/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-30012/21/2014-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 11th February, 2016

S.O. 309.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and Others and their workman, which was received by the Central Government on 10.02.2016.

[No. L-30012/21/2014-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 29th January, 2016

Present :

K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 71/2014

([In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Oil Corporation Ltd. (LPG Bottling Plant) and Another and their workman])

BETWEEN :

Sri T. Duraisamy : 1st Party/Petitioner

AND

1. The Plant Manager : 2nd Party/1st Respondent
IOCL, LPG Bottling Plant
SIPCOT, Perundurai,
Erode District
Erode

2. The Partner : 2nd Party/2nd Respondent
M/s ASK Agencies
Hotel Srimurugan
Building, 56 Devi & Co.,
Lane
Coimbatore-641018

Appearance :

For the 1st Party/
Petitioner Union : M/s Ajay Khose & R.
Kathiravan, Advocates

For the 2nd Party/
1st Respondent : M/s T.S. Gopalan & Co.,
Advocates

For the 2nd Party/
2nd Respondent : M/s R. Shivakumar,
Authorized Representative

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No.L-30012/21/2014-IR (M) dated 28.08.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of M/s ASK Agencies, Coimbatore, Contractor of Indian Oil Corporation Ltd., Perundurai, Erode District in terminating the service of Sri Duraisamy is justified? If not, to what relief the workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 71/2014 and issued notices to both sides. Both sides entered appearance through the counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The LPG Bottling Plant at Perundurai is owned by the First Respondent, the Indian Oil Corporation Ltd. Apart from employing direct permanent workers, the First Respondent has been employing workmen in the name of contract labours through Contractors who are only name

lenders. The contract labourers were involved in production along with permanent workers. The production work in the bottling plant is a continuous process. The contract labourers were employed to carry out various handling work inside the plant and also for loading and unloading, house-keeping, etc. Originally one Saveria Pitchai was appointed as the Contractor of the First Respondent. After 31.03.2003 the Second Respondent was appointed as the Contractor and is continuing till date. The petitioner has contested the election for the Joint Secretary to IOCEU and has succeeded in the election and was elected as one of the Joint Secretaries. This was not liked by the Secretary and the other Joint Secretary of the Union. The petitioner had questioned the manner in which the work was carried out by the Second Respondent. So the Second Respondent orally terminated the service of the petitioner and stopped him from work on 03.07.2008 without issuing any notice and without assigning any reason. The petitioner had sent letters to the Second Respondent requesting to reinstate him. The Second Respondent did not give any reply to the petitioner, nor was he reinstated. The Second Respondent asked the petitioner to bring his Card and Identity Card to consider his request for reinstatement. Thus he went to the Office of the Second Respondent in Coimbatore. They collected the punch card and ID Card of the petitioner and asked him to sign some papers and told him that he would be given employment only if he signed the papers. The petitioner put his signatures in the forms and papers put before him accordingly. The petitioner was told that he would be informed over phone as to when he had to report for work. When the petitioner was expecting information regarding his employment with the Second Respondent he came to know that the amounts due from Provident Fund Account were credited to his Savings Bank Account. The petitioner did not withdraw this amount. Though the petitioner repeatedly demanded for his reinstatement the Second Respondent did not give any reply. The case of the Second Respondent before the Asstt. Labour Commissioner that the petitioner has resigned from his job is not correct. It is a case of termination and not resignation. The termination is in violation of Section-25F of the ID Act. The Second Respondent has also violated Section-25G and Section-25H of the Act. The petitioner is entitled to be reinstated in service with continuity of service and other benefits. An award may be passed accordingly.

4. The First Respondent has filed Counter Statement contending as below:

The petitioner was admittedly engaged as a contract labourer by the Second Respondent. The First Respondent has registered itself as the principal employer under the CLRA Act. It is having certificate of registration. The First Respondent is not a necessary party to the dispute as the petitioner was employed by the Second Respondent. The petitioner is not entitled to any relief.

5. The Second Respondent has filed Counter Statement contending as below:

The Second Respondent is providing manpower to Indian Oil Corporation at LPG Bottling Plant at Perundurai for loading and unloading, handling and house-keeping works in the plant. Contract workers is not engaged in production work in the plant. The petitioner was engaged by the Second Respondent till he resigned from the job on 03.09.2008. He was paid @ Rs. 171/- per day. The Second Respondent does not know whether the petitioner had worked with the earlier Contractor. After resigning from the service of the Second Respondent, the petitioner never approached the Second Respondent for employment. The petitioner is not entitled to any relief.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W13 and Ext.M1 to Ext.M15.

7. **The points for consideration are:**

- (i) Whether termination of the petitioner from the service of the second Respondent, if any is justified?
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner had been admittedly working in the LPG Bottling Plant belonging to the First Respondent at Perundurai as a contract worker. His case is that he was terminated from service by the Second Respondent on 03.07.2008 without issuing any notice and also without any reason. The relief claimed in the Claim statement is that the action of the Second Respondent in terminating the service of the petitioner should be held illegal and unjustified and the Respondent should be directed to reinstate the petitioner in service with all benefits.

9. Though it is specifically stated in the Claim Statement itself that the petitioner was employed by the Second Respondent and was also terminated by the Second Respondent, the relief of reinstatement is sought against the First Respondent also in the Claim Statement. However, if the schedule of reference and the admitted facts are taken into account, reinstatement if any could be by the Second Respondent only as terminating from service was by the Second Respondent. Even though the Claim statement is vague in this respect, the petitioner has made clear during his cross-examination that he is not seeking any relief against the First Respondent but only against the Second Respondent. Thus it could be seen from the facts of the case and from the admission of the petitioner that relief is sought only against the Second Respondent. The First Respondent might have been put in the party array only as a necessary party, it being the principal employer.

10. The case that is put forth by the petitioner in the Claim Statement is that the Second Respondent had some

axe to grind against him since he made some demands representing the contract labourers and he was orally stopped from work by the Second Respondent. On the other hand the contention of the Second Respondent is that the petitioner had resigned from his job and had received his benefits like PF dues and he has ceased to be an employee on his resignation and he is not entitled to any relief. It is further contended by the Second Respondent that in any case the petitioner has not been in continuous service as contemplated under Section-25B of the Industrial Disputes Act as he had worked for only less than 240 days in the 12 months preceding his alleged termination.

11. If the case of the Second Respondent that the petitioner had not been in continuous service is accepted, the petitioner will not be entitled to any relief under Section-25F of the ID Act. It could be seen from Ext.W1, that Show Cause Notice was issued to the petitioner for continuous absence from work. Ext.W2 is the explanation given by him to the Show Cause Notice. Ext.M4 the letter by the petitioner states that he was on leave from 06.07.2005 to 20.07.2005 and had rejoined duty. Ext.M5 is another letter by the petitioner to the Second Respondent stating that he was absent from 27.07.2006 to 28.08.2006 and he will be regular in his work in the future. There is also Ext.M7 which states that he was absent from 13.11.2006 to 21.11.2006. In Ext.M8 he has given further details of his leave in 2008 and has stated that the total working days are 118. A Show Cause Notice seems to have been issued to the petitioner on 22.01.2008 for his absence of various spells for the four months from 01.09.2007 to 31.12.2007 and this is marked as Ext.M9. Ext.M3 is the explanation given by the petitioner. He has admitted during his cross-examination that this letter contains his signature. The above documents are referred to in the background of service particulars submitted by the Respondent and marked as Ext.M15. As could be seen from this the petitioner had not completed 240 days of work in any of the years from 2001-2002 to 2008-2009. The maximum he has worked is 222 days in 2008. In all other years the days worked are much lesser. There is no case for the petitioner that Ext.M3 to Ext.M9 is false or concocted documents. When considered along with this, the particulars given in Ext.M15 must be correct. Even though the Respondent has produced these documents, the petitioner has not produced any document of his own and had not taken any steps to make the Second Respondent produce relevant document which would show that he had completed 240 days of work in the 12 months preceding the date of his alleged termination. It is pointed out on behalf of the Second Respondent that the petitioner had worked only 202 days in the 12 months preceding 03.09.2008 on which date he had allegedly resigned. If calculation is made from 03.07.2008 which is the date of termination according to the petitione also he could not have completed 240 days

preceding the 12 months if Ext.M1 to Ext.M9 are taken into account. So the contention that there is violation of Section-25F of ID Act could not be accepted.

12. Now the contention that the petitioner had resigned from service on 03.09.2008 could be considered. The case of the petitioner is that he was terminated on 03.07.2008, that he requested orally and sent representations for reinstatement, that the Second Respondent asked him to come with the Punching Card and Identity Card to consider his request for reinstatement, he obliged and on his reaching the establishment with all these he was made to sign certain papers and only later when the PF amount due to him reached his Bank account, he came to know that he was made to sign papers of resignation, that he never resigned from the service of the Second Respondent.

13. The case of the petitioner is belied by his own admission during his cross-examination and evidence on the side of the Second Respondent. The petitioner has admitted during his cross-examination that Ext.M10 and Ext.M11 contains his signature. These are the forms to be submitted to the Provident Fund Organization while making claim for the Provident Fund dues. In this the date of resignation of the petitioner is shown as 03.09.2008. Of course, there is the case of the petitioner that he was made to sign certain forms and papers on the pretext that he will be taken back in service if those papers are signed. However, on going through these documents it could be seen that the petitioner could not have been unaware of the nature of these documents. The forms to be given to the Provident Fund Organization are in Tamil as well as in English. The petitioner has studied up to 8th standard and is quite capable of reading and understanding Tamil. So it is not likely that he has put his signature in all the forms that was put to him when the Management demanded. The petitioner has not stated who made him put his signature in the documents by misleading him. The petitioner as could be seen from the Claim Statement was a Union Leader and was working for the welfare of other contract workers. So he could not have been unaware of the forms to be submitted at the Office of the Provident Fund Organization. Along with the forms a copy of the Ration Card of the petitioner also is seen submitted. This would not have been available with the Second Respondent if not handed over by the petitioner. So the case that the petitioner was made to sign papers without knowing the contents could not be accepted.

14. There is one more circumstance which probabalizes the case that the petitioner must have resigned. Even according to the petitioner he was terminated on 03.07.2008. Though his case is that he had made several representations to the Management and he had produced Ext.W6 as a copy of the representation given by him this is not supported by any acknowledgement. In any case why should he wait till 06.02.2010 the date of Ext.W6 to

submit such a representation when he was stopped from work as early as on 03.07.2008? Again the dispute is raised much later. He had approached the conciliation forum only on 06.03.2013 as seen from Ext.W7, the petition filed by him before the Assistant Labour Commissioner (Central), Madurai. Almost 5 years have elapsed before the application was filed. Even in 2010 when the Provident Fund amount reached his account he had come to know that the Management had cheated him. If so, why should he wait for another three years to raise the dispute? The only probability is that the petitioner had voluntarily resigned from his job and had no inclination to work with the Second Respondent after the date of resignation. This dispute is raised only as an afterthought. Since he has resigned voluntarily, the employer-employee relationship between him and the Second Respondent has come to an end. For this reason also he is not entitled to any relief.

In view of my discussion above, the reference is answered against the petitioner.

An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ : WW1, Sri T. Duraisamy
Petitioner

For the 2nd Party/ : MW1, Sri S. Kannusamy
Respondent

Documents Marked:

On the Petitioner's side

Ext.No.	Date	Description
Ext.W1	22.01.2008	Show Cause Notice issued by the II Party to the I Party
Ext.W2	25.01.2008	Explanation given by the I Party
Ext.W3	14.02.2008	Paper publication relating to the murder of the I Party Father
Ext.W4	17.02.2008	Death Certificate of the I Party father
Ext.W5	20.01.2009	Letter given by the I Party
Ext.W6	06.02.2010	Representation given by the I Party to the II Party
Ext.W7	06.03.2013	2(A) Petition filed by the I Party before the ALC (C) Madurai
Ext.W8	18.04.2013	Reply of the II Party filed before the ALC
Ext.W9	-	Rejoinder filed by the I Party
Ext.W10	23.09.2013	Reply statement filed by the I Party
Ext.W11	31.05.2014	Failure Report

Ext.W12	28.08.2014	Order of reference
Ext.W13	-	Identity Card of the I Party

On the Management's side

Ext.No.	Date	Description
Ex.M1	31.07.2013	License issued by Licensing Officer – ALC (C) Madurai to A.S.K. Agencies – covering the period from 30.07.2005 and periodically upto 30.07.2012 (3 sheets)
Ext.M2	06.01.2006	Letter from ALC (C) Chennai under Reference No. M/46/24/99-D4/B2 dated 06.01.2006 enclosing copy of letter u/r reference No. M/46(24)/99-I/D4 dated 05.07.1999, copy of Form-II M.46(24)/99-D4/I under Registration No. RI/10/99 dated 05.07.1999 – Grant of amendment certificate of registration
Ext.M3	-	Letter of T. Duraisamy dated 23.01.2008 for the above show cause notice
Ext.M4	-	Letter of T. Duraisamy to the Respondent-II for his absence from 06.07.2005 to 20.07.2005
Ext.M5	-	Letter of T. Duraisamy to the Respondent-II dated 28.08.2006 for his absence from 28.07.2006 to 28.08.2006
Ext.M6	-	Letter of T. Duraisamy dated 04.11.2006 for his misconduct in his work
Ext.M7	-	Letter of T. Duraisamy for his absence from 13.11.2006 to 21.11.2006
Ext.M8	-	Letter of T. Duraisamy dated 02.01.2008 for his absence during April to December 2007
Ext.M9	-	Show Cause Notice dated 22.01.2008 issued to T. Duraisamy
Ext.M10	-	P.F. Claim in Form No. 19 submitted by T. Duraisamy to the P.F. Organization
Ext.M11	-	P.F. Claim in Form No. 10-C submitted by T. Duraisamy to the P.F. Organization
Ext.M12	-	T. Duraisamy's Canara Bank Account's details

- Ext.M13 - T. Duraisamy's Ration Card First Page
- Ext.M14 - Form No. 3A submitted by the Respondent II to the P.F. Organization for the years 2007-08, 2008-09
- Ext.M15 - Service particulars submitted by Respondent II to the P.F. Organization from 01.10.2001 to 03.09.2008

नई दिल्ली, 11 फरवरी, 2016

का.आ. 310.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 140/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-30011/46/2006-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 11th February, 2016

S.O. 310.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 140/2006) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and Others and their workman, which was received by the Central Government on 10.02.2016.

[No. L-30011/46/2006-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi, Presiding Officer,
CGIT-cum-Labour Court,
Ahmedabad,
Dated 8th January, 2016

Reference: (CGITA) No. 140/2006

1. The Dy. General Manager (P),
ONGC Ltd., Ankleshwar Project,
Ankleshwar, Bharuch
2. The Chief Manager (Security),
ONGC Ltd., Ankleshwar Project,
Bharuch

3. Chief Manager (Reservoir),
ONGC Ltd., Ankleshwar Project,
Bharuch
4. The Dy. General Manager (Geology),
ONGC Ltd., Ankleshwar Project,
Bharuch
5. The Central Investigation &
Security Services,
Opp. S.A. Motors,
Old N.H. No. 8, Ankleshwar,
Bharuch
6. The Industrial Security Services,
Nr. ONGC Workshop,
Opp. Neelkanth Society,
Niharika Apartment, Ground Floor,
ONGC Road, Ankleshwar-393001
Bharuch
7. M/s. P.D. Patel & Co.,
Sardar Patel Complex,
GIDC Chowkdi,
Ankleshwar,
Bharuch
8. M/s. Niramal Construction Co.,
Vaishali Society, Ankleshwar,
Bharuch

...First Party

Vs.

Their Workmen
Through the Chairman,
ONG Mazdoor Sangh,
C/o. ONGC Ltd.
Ankleshwar,
Bharuch

...Second Party

For the First Party : -

For the Second Party : -

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L- 30011/46/2006-IR (M) dated 19.06.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of ONG Mazdoor Sangh, Ankleshwar for absorption of S/Sh Karsanbhai Vasava and 97 others (as per list attached as Annexure A-1) working as contract labours with the ONGC Ltd., Ankleshwar is legal and justified? If so, what relief the workers are entitled to and from which date?”

2. This reference dates back to 19.06.2006. Second party has been absent since last several dates and has also not filed the statement of claim. Thus, it appears that second party is not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 फरवरी, 2016

का.आ. 311.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1334/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-30012/117/2000-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 11th February, 2016

S.O. 311.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1334/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and Other and their workman, which was received by the Central Government on 10.02.2016.

[No. L-30012/117/2000-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated 8th January, 2016

Reference: (CGITA) No. 1334/2004

Reference: (ITC) No. 54/2000

1. The Group General Manager (P),
ONGC Ltd.,
Hazira Project,
P.O. Bhatpore,
Surat, (Gujarat)-394518

2. The Surat Electricity Co. Ltd.,
Contract Division,
403, 404 Ruchita, Athugar Street,
Nanpura
Surat (Gujarat)-395001

...First Party

Vs.

Their Workman

Sh. Nilesh R. Modi,

Nr. Gujararti School, Talav Street,

Bor Bhatha, Taluka Choryasi,

Dist Surat

...Second Party

For the First Party :

-

For the Second Party :

-

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L- 30012/117/2000-IR(M) dated 22.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Surat (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the contract between the management of ONGC Ltd., Hazira Project, Surat & contractor. The Surat Electricity Co. Ltd., Contract Div., Surat in respect of the contractual workman Sh. Nilesh R. Modi is sham & bogus contract?”

“Whether the demand of the workman Sh. Nilesh R. Modi for treating / declaring him as direct and regular/ permanent employee of ONGC Ltd., Hazira Project from either the date of his initial engagement with the Contractor or from the date of Notification issued by Govt. of India, prohibiting his alleged employment/work though the contract system is legal, proper and justified? If so, to what relief Sh. Nilesh R. Modi is directions are necessary in the matter?”

2. This reference dates back to 22.08.2000. Second party filed the statement of claim (Ext.5) and the reply to the statement of claim first party submitted written statement (Ext.12) on 03.01.2001. Second party has been absent since last several dates to lead the evidence. Thus, it appears that second party is not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 फरवरी, 2016

का.आ. 312.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स गैस अथॉरिटी ऑफ इंडिया लिमिटेड और दूसरों के प्रबंधन के संबद्ध

नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 173/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-30011/55/2006-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 11th February, 2016

S.O. 312.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 173/2006) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Gas Authority of India Ltd. and Others and their workman, which was received by the Central Government on 10.02.2016.

[No. L-30011/55/2006-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated 6th January, 2016

Reference: (CGITA) No. 173/2006

1. The General Manager,
Gas Authority of India Ltd.,
Manisha Circle,
Old Padra Road,
Vadodara (Gujarat)
2. M/s Espi Corporation,
8, Basemen Basera Complex,
Opp. Dhara Hospital,
Gotri Road,
Vadodara
3. M/s. Lashco,
2, Param Park,
Nezampura Telephone
Exchange Road,
Navyad,
Vadodara (Gujarat)

...First Party

Vs.

Their Workman
Through Chemecal Mazdoor Panchayat,
The President,

311, Sarvodaya Commercial Centre,
Salapose Road,
Nr. GPO,
Ahmedabad (Gujarat)-380001

...Second Party

For the First Party : Sh. B.K. Oza, Advocate

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L- 30011/55/2006-IR(M) dated 11.09.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether demand of the union for regularisation of services of Sh. Tulsibhai Manilal Solanki, Sh. Dhayabhai B. Solanki & Ratilal K. Harijan in the establishment of GAIL (India) Ltd. is legal, Proper and just? If so, to what relief these concerned workmen are entitled?”

2. This reference dates back to 11.09.2006. Both the parties were served. First party filed the Vakalatnama (Ext.11) but second party did not prefer to file his statement of claim despite giving number of opportunities. He has been absent since last several dates. Thus, it appears that both parties are not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 फरवरी, 2016

का.आ. 313.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड और दूसरों के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1465/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-30011/68/2004-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 11th February, 2016

S.O. 313.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1465/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure

in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and Others and their workman, which was received by the Central Government on 10.02.2016.

[No. L-30011/68/2004-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad,
Dated 7th January, 2016

Reference : (CGITA) No. 1465/2004

1. The Chief Manager, Security,
ONGC Ltd.,
Avani Bhavan,
Chandkheda, Ahmedabad Asset,
Ahmedabad (Gujarat)
2. The Managing Director,
Industrial Security Services,
8, Parichay Shopping Centre,
'D' Cabin, Sabarmati,
Ahmedabad (Gujarat)-380001
3. The Executive Director,
ONGC Ltd.,
Ahmedabad Asset, Avani Bhavan,
5th Floor, Chandkheda,
Ahmedabad (Gujarat) ...First Party

Vs.

Their Workmen
Through the General Secretary,
Gujarat Employees Union,
434/36. Gandhivas Naka,
Gujarat Stadium Circle, Sabarmati,
Ahmedabad (Gujarat) ...Second Party

For the First party : Sh. K.V. Gadhia, Advocate

For the Second party : C/o. Gujarat Petroleum
Employees Union

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L- 30011/68/2004-IR(M) dated 24.09.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd. in not regularising the 80 contract labourers (as mentioned in Annexure Q) engaged by the Contractors M/s Industrial Security Services is legal and justified? If not, to what relief the workmen concerned are entitled?”

2. This reference dates back to 24.09.2004. First party filed the vakilpatra (Ext.3). Second party was also served and second party, General Secretary, Gujarat Petroleum Employees Union, Ahmedabad vide his application (Ext.5) submitted documents regarding name and particulars of the employees working as security guard under Security Services. General Secretary of the aforesaid union vide application Ext. 6 & 7, 8 sought time to produce documents.

3. Further, he moved an application (Ext.9) for withdrawal of the reference with respect to workman Murgu Satyakumar along with the agreement reached between the parties. On the said application (Ext.9) the then Presiding C.G.I.T.-cum-Labour Court, Ahmedabad allowed the Ext.9 and case was fixed on 17.04.2013 for submitting statement of claim since no statement of claim filed in the reference.

4. Since 17.04.2013, number of opportunities were given to the second party to submit the statement of claim but to no result. Thus, in the circumstances of the case, it appears that second party is not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 फरवरी, 2016

का.आ. 314.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 26/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-30011/1/2010-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 11th February, 2016

S.O. 314.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2010) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in

the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 10.02.2016.

[No.L-30011/1/2010-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 26 of 2010

Parties:

Employers in relation to the management of BPCL
Territory Office & LPG Plant

AND

Their workmen

Present :

Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the : Mr. K. Bhattacharya, Ld.
Management Counsel with Mr. J. Mondal,
Ld. Counsel for BPCL Territory
Office & LPG Plant.
Mr. Bhola Singh, Manager for
Total Security Solutions.
None for Dee Pee Security
Service.

On behalf of the : None
union

State : West Bengal Industry : Petroleum.

Dated: 19th January, 2016

AWARD

By Order No.L-30011/1/2010-IR(M) dated 07.06.2010 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s Total Security Solutions a contractor of M/s. Bharat Petroleum Corporation Ltd. in terminating the services of S/Shri A.K. Dutta and D.K. Das w.e.f. 10.10.2008 is just and legal? What relief the workmen concerned are entitled to and from which date?”

2. When the case is taken up today for hearing, none appears on behalf of the union, though BPCL Territory Office & LPG Plant and M/s. Total Security Solutions are represented by their Ld. Counsel and authorized representative respectively. It appears from the record that the union is absent for the last two consecutive dates.

3. Considering the above, it may reasonable be presumed that the union at whose instance the present reference has been initiated, is not at all interested to proceed with the case. So, no fruitful purpose will be served in keeping the matter pending.

4. In view of the above, the present reference is disposed of by passing a “No Dispute Award”.

Dated, Kolkata,

The 19th January, 2016

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 11 फरवरी, 2016

का.आ. 315.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडिया रिसोर्सेस लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 25/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-43011/2/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 11th February, 2016

S.O. 315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2015) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. India Resources Ltd. and their workman, which was received by the Central Government on 10.02.2016.

[No.L-43011/2/2015-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A)
of I.D. Act, 1947

Reference: No. 25/2015

Parties :

Employer in relation to the management of
M/s. India Resources Ltd.

AND

Their workmen

Present :

Sri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D.Mukherjee, Advocate
 For the workman : Shri S.N.Goswami, Advocate
 State : Jharkhand Industry : Copper Mines
 Dated 18/01/2016

AWARD

By order No. L-43011/2/2015/ IR (M), dated 01/06/2015, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of M/S India Resources Ltd, Contractor of M/S Hindustan Copper Ltd is justified in denying the benefits under the provision of retrenchment 25 (N) of Chapter V B of I.D Act 1947? If not, what relief they are entitled to?”

2. This case is received from the Ministry of Labour on 25/06/2015, After receipt of the reference, both parties are noticed. The workman files their written statement on 21/07/2015, and the management files their written statement on 28/08/2015.
3. Short point to be decided in the case is as to whether the workman who were retrenched from their services, are entitled to any benefit under the reference,
4. During the proceeding of this case, settlement arrived between the management authorities and the both union ie. Mosaboni Mines employees Union and Jharkhand copper Mines workers Union of this case and they filed a settlement. Certain workmen, challenged the settlement but on scrutiny it is found that the settlement have been signed by the union executive and the management.
5. But the workmen claimed termination allowances during the period, they were retrenched. But it is submitted by the management. That in the settlement, there was no clause for payment of retrenchment allowance.
6. Admittedly all the workmen are now in employment, therefore the settlement arrived by the parties accepted and case is closed.

This is my award.

R. K. SARAN, Presiding Officer
 FORM

Under Rule 58

SETTLEMENT

MEMORANDUM OF SETTLEMENT ARRIVED AT
 UNDER RULE 58(4) OF THE INDUSTRIAL DISPUTES
 (CENTRAL) RULES, 1947 BETWEEN THE

MANAGEMENT OF M/S. INDIA RESOURCES LIMITED, MOSABONI CONCENTRATOR PLANT, P.O. & P.S. - MOSABONI, EAST SINGBHUM, JHARKHNAD - 832104, CONTRACTOR OF HINDUSTAN COPPER LIMITED/INDIAN COPPER COMPLEX AND THEIR WORKMEN REPRESENTED BY JHARKHAND COPPER MINES WORKERS UNION (REGISTERED UNION) ON 14.09.2015

NAME OF THE PARTIES

Representatives of IRL Management

1. Mr. B.N.Shukla
2. Mr Prabhat Kumar Dubey

Union Representatives

1. Mr. Subash Misra
(Asst. General Secreary)
2. Mr. Tapan Panda
(Vice President)

Short recital of the Case

The mining operation of IRL at Surda Mine and concentrator Plant was stopped by Hindustan Copper Ltd. (Principal Employer) from “B” shift of 8 Sep 2014 which was due to non renewal of mining lease by Hindustan Copper Ltd. After stoppage of operation IRL published a notice for “NO WORK NO PAY”. A dispute was raised before conciliation officer ALC, Chaibasa under which the notice of management of IRL “NO WORK NO PAY” was disputed by both unions. The Mosabani Mines Employees Union (MMEU) demanded for whole salary of entire workmen for this suspension period while Jharkhand Copper Mines workers union (JCMWU) demanded for retrenchment benefit under Sec 25 N of ID Act. The Management of IRL signed a settlement (Form-H) with both union separately on dated 20 Nov 2014 in presence of DLC, Dhanbad. In this settlement company was to pay entire wages to its 1310 workmen up to 20th November 2014 from the date of suspension of work notice dated 8th September 2014.

The company's has already complied with the terms of settlement dated 20 Nov 2014. The amount for the month of Sep and up to Oct 31, 2014 was directly released by HCL in the workmen's respective bank accounts, vide cheque no. 035281 & 035382 dated 19.11.2014. 1st Nov to 20th Nov 2014 wages has been paid on dated 25.06.2015, vide SBI cheque no 150314 & Axes cheque no 103106 by IRL itself.

In the meantime due to uncertainty of renewal of mining lease management of IRL decided to separate the entire workmen permanently. Wit a view to it on 8.12.2014, termination notices were sent to entire workmen and a copy of the notice were sent to all concern departments including ALC Chaibasa. ALC, Chaibasa took the

cognizance of the termination suo motu and issued notices for the joint discussion to resolve the issue amicably. In the meantime after protracted joint discussions with both unions and management of IRL the termination of contract employment of entire workforce was primarily it was kept in abeyance under instruction of HCL and withdrawn subsequently on dated 25.12.2015. It was agreed by and between the parties that entire workforce(1310) will work on roster basis and it will be restricted to 250 workforce/day. All the workmen who had worked during this suspension period have been paid as per their actual attendance up to resumption of work ie 16.06.2015. It is significant to note that entire workforce has been resumed on 16.06.2015. Therefore, continuity of contract employment is not broken at all and all the workers are working on the company's role. Therefore, dispute of retrenchment benefit may not be raised.

In view of the above facts no dispute is alive for adjudication before labour Court.

Meeting was called by management of IRL to resolve the referred dispute (Ref: 25/2015/196 & Order no.1-43011/2/2015/IR(M) which is pending for adjudication before Central Govt. Industrial Tribunal-Additional Labour Court (No-1) Dhanbad and in which management has been directed to file written statement and rejoinder to the dispute on 28.08.2015.

After a prolonged discussions unions were in view that IRL had no role in the renewal of mining lease and it was a lapse from the end of HCL and due to uncertainty of renewal of lease Management taken decision to separate the employee by way of termination which was ultimately withdrawn by IRL. Now all the worker have been resumed their duties and have been paid till 16.06.2015 as per roster and the settlement dated 20.11.2014 has also been complied with. Therefore, Unions do not see any ill intension of management and decided not to proceed further in this matter. In the interest of entire workmen and smooth operation of the project, the parties agreed to resolve the aforesaid referred dispute by signing a memorandum of settlement on the following terms and condition:

Terms of settlement

1. It is agreed by union not to contest the reference case pending before the CGIT, NO-1 being referred case no 25/2015/796. [Order No. L-43011/2/2015(IR(M).]
2. The management has already allowed all the concerned workmen to resume duty, so no dispute is pending for adjudication.
3. The union will not raise any dispute of wages in future for this period of suspension of work (From 8th Sep 2014 to 16.06.2015).
4. It is agreed to file this copy of settlement jointly before the tribunal with a prayer to pass no dispute ward. If union representatives fails to file this copy of settlement

before the tribunal at the expected date It shall be presumed that the terms and conditions of the settlement has been fully Implemented.

Signature of Management Signature of Union/workmen

1. Sd./- Illegible

1. Sd./- Illegible

2. Sd./- Illegible

2. Sd./- Illegible

3. Sd./- Illegible

Witness :

1. Sd./- Illegible

2. Sd./- Illegible

FORM H

Under Rule 58

SETTLEMENT

MEMORANDUM OF SETTLEMENT ARRIVED AT UNDER RULE 58 (4) OF THE INDUSTRIAL DISPUTES (CENTRAL) RULES, 1947 BETWEEN THE MANAGEMENT OF M/S. INDIA ESOLRCES LIMITED, MOSABONI CONCENTRATOR PLANT, P.O. & P.S. - MOSABONI, EAST SINGBHUM, JHARKHNAD - 832104, CONTRACTOR OF HINDUSTAN COPPER LIMITED / INDIAN COPPER COMPLEX AND THEIR WORKMEN REPRESENTED By MOSABONI MINES EMPLOYEES UNION (RECOGNISED) ON 14.09.2015

NAME OF THE PARTIES

Representatives of IRL Management

1. Mr. B.N.Shukla

2. Mr Prabhat Kumar Dubey

3. Mr. Rajan S. Iyer

Union Representatives

1. Mr. Rajendra Pratap Singh

2. S. K. Husain

Short recital of the Case

The mining operation of IRL at Surda Mine and concentrator Plant was stopped by Hindustan Copper Ltd. (Principal Employer) from "B" shift of 8 Sep 2014 which was due to non-renewal of mining lease by Hindustan Copper Ltd. After stoppage of operation IRL published a notice for "NO WORK NO PAY". A dispute was raised before conciliation officer ALC, Chaibasa under which the notice of management of IRL "NO WORK NO PAY" was disputed by both unions. The Mosabani Mines Employees Union (MMEU) demanded for whole salary of entire workmen for this suspension period while Jharkhand Copper Mines workers union (JCMWU) demanded for retrenchment benefit under Sec. 25 N of ID Act. The Management of IRL signed a settlement (Form-H) with

both union separately on dated 20 Nov 2014 in presence of DLC, Dhanbad. In this settlement company was to pay entire wages to its 1310 workmen up to 20th November 2014 from the date of suspension of work notice dated 8th September 2014.

The company's has already complied with the terms of settlement dated 20 Nov 2014. The amount for the month of Sep and up to Oct 31, 2014 was directly released by HCL in the workmen's respective bank accounts, vide cheque no. 035281 & 035382 dated 19.11.2014. 1st Nov to 20th Nov 2014 wages has been paid on dated 25.06.2015, vide SBI cheque no. 150314 & Axes cheque no. 103106 by IRL itself.

In the meantime due to uncertainty of renewal of mining lease management of IRL decided to separate the entire workmen permanently. With view to it on 8.12.2014, termination notices were sent to entire workmen and a copy of the notice were sent to all concern departments including ALC Chalbasa. ALC, Chaibasa took the cognizance of the termination suo motu and issued notices for the joint discussion to resolve the issue amicably. In the meantime after protracted joint discussions with both unions and management of IRL the termination of contract employment of entire workforce was primarily it was kept in abeyance under instruction of HCL and withdrawn subsequently on dated 25.12.2015. It was agreed by and between the parties that entire workforce (1310) will work on roster basis and it will be restricted to 250 workforce/day. All the workmen who had worked during this suspension period have been paid as per their actual attendance up to resumption of work i.e. 16.06.2015. It is significant to note that entire workforce has been resumed on 16.06.2015. Therefore, continuity of contract employment is not broken at all and all the workers are working on the company's roll. Therefore, dispute of retrenchment benefit may not be raised.

In view of the above facts no dispute is alive for adjudication before labour Court.

Meeting called by management of IRL to resolve the referred dispute (Ref: 25/2015/796 & Order no. L-43011/2/2015/IR(M) which is pending for adjudication before Central Govt. Industrial Tribunal-Additional Labour Court (No.1) Dhanbad and in which management has been directed to file written statement and rejoinder to the dispute on 28.08.2015.

After a prolonged discussions unions were in view that IRL had no role in the renewal of mining lease and it was a lapse from the end of HCL and due to uncertainty of renewal of lease Management taken decision to separate the employee by way of termination which was ultimately withdrawn by IRL. Now all the worker have been resumed their duties and have been paid till 16.06.2015 as per roster and the settlement dated 20.11.2014 has also been

complied with. Therefore, Unions do not see any ill intension of management and decided not to proceed further in this matter. In the interest of entire workmen and smooth operation of the project, the parties agreed to resolve the aforesaid referred dispute by signing a memorandum of settlement on the following terms and condition :

Terms of settlement

1. It is agreed by union not to contest the reference case pending before the CGIT, No. 1 being referred case no. 25/2015/796. [Order No. L-43011/2/2015-IR(M).]
2. The management has already allowed all the concerned workmen to resume duty, so no dispute is pending for adjudication.
3. The union will not raise any dispute of wages in future for this period of suspension of work (From 8th Sep 2014 to 16.06.2015).
4. It is agreed to file this copy of settlement jointly before the tribunal with a prayer to pass no dispute award. If union representatives fails to file this copy of settlement before the tribunal at the expected date it shall be presumed that the terms and conditions of the settlement has been fully implemented.

Signature of Management Signature of Union/workmen

- | | |
|-----------------------|--------------------|
| 1. Sd./- Illegible | 1. Sd./- Illegible |
| 2. Sd./- Illegible | 2. Sd./- Illegible |
| 3. Sd./- Illegible | |

Witness :

1. Sd./- Illegible
2. Sd./- Illegible

नई दिल्ली, 11 फरवरी, 2016

का.आ. 316.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड और दूसरे के प्रबंधन के संबंध में निोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ संख्या 28/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-30011/48/2010-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 11th February, 2016

S.O. 316.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2011) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation

to the management of M/s. Bharat Petroleum Corporation Ltd. and Others and their workman, which was received by the Central Government on 10.02.2016.

[No. L-30011/48/2010-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present:

Shri. K. Sasidharan, B.Sc., LLB, Presiding Officer
(Friday the 29th day of January, 2016/9th Magha, 1937)

ID 28/2011

- Unions : 1. The General Secretary,
Petroleum Employees Union,
C/o BPCL No.1,
Ranganathan Garden,
Anna Nagar(W),
Chennai – 600040
2. The General Secretary,
Petroleum Employees Association
(CITU), C/o BPCL, Irimpanam,
Kochi (Kerala) – 682309

By Adv. Shri John Vipin

- Management : The Chief Manager (HRS) South,
M/s Bharat Petroleum Corp. Ltd.,
No.1, Ranganathan Garden,
Anna Nagar(W), Post Bag No.1212
& 1213, Off 11th Main Rd.,
Chennai – 600040

By M/s.Menon & Pai

This case coming up for final hearing on 22.01.2016 and this Tribunal-cum-Labour Court on 29.01.2016 passed the following:

AWARD

This is a reference under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947.

2. The dispute referred for adjudication before this tribunal is as follows:

“(1) Whether the action of the management in declaring 8 workers as surplus and their subsequent transfer from Trivandrum Plant to Cochin Plant without discussing and obtaining consent of the unions is justified? (2) Whether the action of the management in reducing the strength of workmen in the plant and transferring these employees without proper notice is in violation of Section 9A of the Industrial Disputes Act? (3) Whether the action of the management in respect of transfer of these

employees amounts to unfair labour practice as defined under Section 2(ra) of Industrial Disputes Act, 1947? If so, what relief these workmen are entitled to?”

3. After receipt of the reference order No.L-30011/48/2010-IR(M) dated 30.09.2011, issued by the Ministry of Labour, Government of India, notice was issued to the parties to appear and answer all the material questions relating to the dispute and to produce documents to substantiate their respective contentions. The unions as well as the management entered appearance through counsels. Subsequently the management produced copy of the stay order in WP(C) No.34287/2011(I) dated 21.12.2011 passed by the Hon’ble High Court of Kerala, Ernakulam. As per that order the Hon’ble High Court of Kerala stayed all further proceedings pursuant to the order of reference above. The stay order was in force till the disposal of the Writ Petition. The Hon’ble High Court of Kerala disposed WP(C) No.34287/2011 on 25.03.2014 and the stay was vacated.

4. The judgment dated 25.03.2014, passed by the Hon’ble High Court of Kerala in WP(C) No.34287/2011 reads as follows:

“The learned counsel for the petitioner as also the party respondents being respondents 3 and 4 submit that the matter has been settled as per an agreement dated 09.01.2014. Hence the Writ Petition stands closed. The interim stay granted on 21.12.2011 will stand vacated on the Writ Petition being closed. The parties shall be at liberty to file a settlement before the Industrial Tribunal”.

5. After the disposal of the Writ Petition by the Hon’ble High Court of Kerala, Union Nos.1 and 2 remained absent and there was no representation on their behalf. Hence they were called absent and set ex-parte.

6. The learned counsel for the management produced copy of the Memorandum of Settlement (MOS) on wages and other matters dated 09.01.2014, entered into between the management and the unions. The said document is marked as Ext.M1. Page No.8 of Ext.M1 document reveals that the parties agreed to withdraw as settled, all proceedings pertaining to the items covered under the MOS or any other past agreements/settlements pending either in any conciliation or before any Court of Law by unions. The matters covered under Ext.M1 Memorandum of Settlement(MOS) produced by the management include the matter referred for adjudication as per the reference above. In view of the Memorandum of Settlement which is marked as Ext.M1, it is evident that there is no subsisting industrial dispute to be adjudicated as per the reference above since the parties have settled the dispute amicably.

5. In the result an award is passed holding that there is no subsisting industrial dispute to be adjudicated as per the reference.

The Award will come into force one month after its publication in the Official Gazette.

K. SASIDHARAN, Presiding Officer

APPENDIX

Witness for the unions - NIL

Witness for the management - NIL

Exhibit for the unions - NIL

Exhibit for the management

M1 - Copy of the Memorandum Of Settlement (MOS) on wages & other matters dated 09.01.2014.

नई दिल्ली, 10 फरवरी, 2016

का.आ. 317.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 75/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-22012/384/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 10.02.2016.

[No.L-22012/384/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Ref. No. 75 of 2005

Employer in relation to the mgt. of Food Corporation of India, Patna

AND

Their workmen

Present :

Shri Ranjan Kumar Saran, Presiding Officer

Appearances :

For the Employers : Shri A.K.Sinha, Advocate

For the workman : Shri V.Kumar, Rep.

State : Jharkhand

Industry : Food

Dated : 21/01/2016

AWARD

By Order No. L-22012/384/2004-IR (CM-II), dated 22/08/2005, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Food Corporation of India in terminating the services of Shri Bhopal Tiwary instead of regularising the service is legal and justified? If not, to what relief the workman is entitled?”

2. This Case is received from the Ministry of Labour & Employment on 12.09.2005. After receipt of reference, an award was passed by this Tribunal on 18.07.2014 in which termination of workman from service declared not legal and unjustified and allow to take back the workman in service at once.

3. The case of the workman that the workmen/sponsoring union filed written statement stating therein that the concerned workmen was employed by the management of Food Corporation of India at FSD Jamui under District Manager FCI Bhagalpur during the month of June 1980 as casual worker to perform the job of casual employee and he was working as casual employee for sweeping, collecting food grains, filling loose grains in bags and use to keep watch over the stock in transit, in railway station beside other ancillary work i.e. to attend post office, to hand over dak to District Office, to fetch water to the officials of FCI and all other works as assigned by the superiors. His work was identical to regular category IV workmen but he was paid less wages than regular workman and was also not getting other benefits.

4. It is also submitted by the workman that, he was stopped from attending his office from the month of Oct' 1985 in utter violation of Sec.25 of ID Act, 1947 and that too after completion of much more than 240 days of service within 12 calendar months. Against his retrenchment, dispute was raised by union and his case was referred by the Govt. of India to this Tribunal for adjudication about validity of his retrenchment.

5. One Written statement was filed by the workman in Ref. 251/90 before this Tribunal and management also filed a Written statement and admitted the case of the concerned workman and shown eagerness to employ him again as a casual employee marked as Ext. W-3, and accordingly an

award was passed by this Tribunal, marked as exhibit-W-4 & W-5, and in accordance with the award the concerned workman was reinstated /taken back in job as per order of this Tribunal marked as exhibit- W-6/1 in which an office order issued vide letter no. IR/DEP/IP/B.Tiwari/89-90/555 dated 04/05.06.96.

6. It is further stated that in the Award of Ref. 251/90, marked as exhibit W-5 there was instruction for his regularisation in accordance with the provision of FCI but his regularisation was not considered by FCI in accordance with circular dated 6.5.87 exhibit W-2. As per this circular a casual worker who has completed 90 days service as on 2.5.86 is entitled to be regularised against category III & IV post according to their qualification but the case of the concerned workmen was not considered despite fulfilling all the conditions of the said circular and he was again retrenched during Feb'2003 over which the instant case was referred by the Govt. of India for adjudication as per schedule mentioned in para 1.

7. It is also submitted by the workman, that the management has adopted pick & choose method to regularise the service of the casual employee working with the concerned workman. Several junior casual worker who are employed after employment of the concerned workman are regularised against Cat-IV post long ago but management has discriminated the concerned workman by adopting unfair labour practice as such it is prayed that the action of the management in not regularising the service against Cat-IV watchman as has been done in case of other is quite illegal & unjustified and he is entitled to get the same benefits along with back wages as has been given to other similarly situated workman.

8. On the other hand, the case of the management that the concerned workman is not workman under sec. 2(s) of the I.D. Act and there is no employer and employee relationship. It is also submitted that the concerned workman has worked under the contractor at FSD Jamui and Sahebganj and he was not on the roll of FCI.

9. It is also stated that there have been never any notified vacancy for the alleged any sanction for such vacancy or post nor any invitation of application for filling up any such vacancy or post, nor did the workman ever undergo any prescribed test or interview nor any committee ever took any test or interview for regularisation of the workman nor any office order been issued for employment of the workman nor has his name been routed through any employment exchange. Without such prerequisites the question of employment of the said workman is completely ruled out and the allegations to the contrary are distorted, and suppression of the fact that he was at all material times a casual employee working under a contractor and as such he could never be called an employee of FCI. Hence the question of his termination of service is totally imaginary and motivated.

10. It is also submitted by the management that his name was not sponsored by any employment exchange. It is further stated that the workmen is claiming that he worked from 1980 to 1985 and 1996 to 2003 and has completed 240 days service within 12 calendar month but he did not produce anything to prove that he worked for more than 240 days within 12 calendar months and it is claimed by the management that he has not worked for a day in FCI. On this ground it is prayed by the management that the claim of the concerned workmen is fit to be rejected.

11. By way of rejoinder to the written statement of the workmen, the contentions of the sponsoring union in the written statement filed on behalf of the workman have been denied specifically and para-wise and same is said to be incorrect and without any merit and it was denied. It is finally said that award be passed accordingly rejecting the claim of the workman.

12. It is further stated that the workmen is claiming that he worked from 1980 to 1985 and 1996 to 2003 and has completed 240 days service within 12 calendar month but he did not produce anything to prove that he worked for more than 240 days within 12 calendar months and it is claimed by the management that he has not worked for a day in FCI. On this ground it is prayed by the management that the claim of the concerned workmen is fit to be rejected.

13. The FCI Management was not attending the proceeding after filing its Written statement & rejoinder. FCI management was given series of adjournment so that they may produce witness but they were fail to avail the opportunity and lastly the award was passed on 18.07.2014 which was challenged by FCI management by filing writ petition no. 2735 of 2015 before the Hon'ble Jharkhand High Court and vide order dated 11.09.15 the case was remitted back to this Tribunal to provide an opportunity to FCI management who adduce one witness namely Sri Ravi Ranjan and also to cross-examine the concerned workman, and accordingly the said opportunity was given to the management of FCI thereafter the management adduce his witness Sri Ravi Ranjan as MW-1 and the case on behalf of the management was closed and the same is fixed for argument with the consent of both the parties.

14. The present reference is as to whether the workman is to be regularised as workman under FCI management or not. The workman's case is that he was rendering services to the FCI and he was illegally terminated for which he raised a dispute and this Tribunal in Ref. Case No. 251/1990, directed the management to take the workman as casual employee and also directed to regularise the workman in due course. The workman filed document of management that they complied the award of the Tribunal, and subsequently allowed him to sit for which the present reference arose.

15. In this reference, the management stated that he is speaking on the basis of official record and further says that the concerned workman was working in FCI as contractual worker but unable to tell the name of the contractor. Therefore it is clear that the the workman was working in the organisation and to support it he filed the photocopy of Attendance register, with stamp and signature of FCI Official.

16. Exhibit W1 is a copy of attendance register monthwise duly signed by the depot incharge Sahebganj and on perusal of the same it is clear that the concerned workman has worked for 23 to 26 days in a month regularly except Sunday & holidays w.e.f. 1996 to 2003 i.e till his retrenchment and as per exhibit W3 i.e W-5 of the management it is clearly Admitted by FCI in para 8 that the concerned workmen was working at FSD Jamui from 80 to 1985 under the FCI. Exhibit W-6 is the statement of attendance w.e.f 1980 to March 1983 duly signed by Asstt. Depot Superintendent FSD Jamui and on perusal of the same it is crystal clear that workmen has worked for 121 days from Jan. 80 to Dec 80, 233 days during Jan 81 to Dec 81, 202 days.

17. The Management witness has not denied the photocopy of Attendance register nor the counsel of FCI suggested the workman that the photocopy of document were ingenuine. "He has also stating in cross-examination that I have no personal knowledge regarding this case and I am deposing on the basis of record of management I did not see the w/s of FCI filed in Ref. 251/90. He also says that I can not tell the name of the contractor".

18. The circular of FCI speaks, a person who worked for 90 days as on 2.05.1968 in FCI in a calendar year will be regularised but unfortunately that circular is not obeyed by the FCI management. However the management has not denied the policy decision dated 6.5.87 regarding regularisation of casual employee/ worker and availability of vacancy of Cat-IV post.

19. On perusal of the Ext W-6/1, in which it is mention that "for implementation of Hon'ble CGIT award in ID No. 251/90 Shri Bhopal Tiwari is hereby posted to FSD Sahibgunj as a casual Labour." It is also mentioned in Ext. W-6/1 that, the date of appointment will be treated as per his date of joining.

20. On the basis of this circular and recently division bench of Hon'ble Jharkhand High Court has given a judgement on 3.9.14 in PLPA No. 516 & 518 of 2004 in case of their workmen vrs employers in relation to the management of FCI which has already been upheld by the Hon'ble Apex Court in SLP No. 7314-7315 of 2015 vide order dated 14.8.15. The relevant portion given in para 18 and 20 are reproduced herein below:-

"18. This aspect of the matter has also not been properly appreciated by the learned Single Judge. It

appears that several decisions including the decision in Uma Devi (Supra) was relied upon by the learned Single Judge. But, we like to observe here that the ratio decided in these cases does not apply to the present case. Nonetheless, said ratio should be read in the context of facts of the present case. No judge can lost site of the facts. The fabric of the facts is to be viewed in its proper perspective. When there is already a policy decision of the Food Corporation of India for regularisation and when the concerned workmen are fulfilling all the criteria, including the length of service on or before a particular cut of date (in the present case there is a condition of three months service as on 2nd May 1986) said policy decision is to be followed by the management uniformly in all cases. The Management cannot adopt pick and choose method in regularisation. Applying the policy decision in few cases while not doing so with respect to others tantamount not only to discrimination but also to arbitrariness on the part of the respondent management and whenever there is arbitrariness there is always a breach of right of equality. Arbitrariness and equality are sworn enemies. When arbitrariness is present equality is always absent and vice versa. Thus, there was already a policy decision issued by the respondent Food Corporation of India, under which, if any casual worker or daily wages worker on or before 2nd May, 1986 has completed three months of service, he should be regularised and as per the said policy decision similarly situated co-workers have been regularised. The Present workmen Jamuna Das was also fulfilling the criteria of the completion of three months service on 2nd May, 1986 as required under the said policy decision. In these circumstances, no error has been committed by Central Government Industrial Tribunal No.I, Dhanbad in passing the award dated 6th May, 1997 in Reference No. 122 of 1996. This aspect of the matter has also not been properly appreciated by the learned single Judge while allowing the writ petition.

"20. In view of the aforesaid decision rendered by the Hon'ble Supreme Court, which was also pertaining to Food Corporation of India workers and which also discussed the same policy decision dated 6th May, 1987 that when there is a policy decision of the Management to regularise the services of daily rated workers / casual workers and when it is applied in case of some workers, it should also be followed with respect to other similarly situated co-workers who are otherwise fulfilling the criteria prescribed in the policy decision. In the present case this criteria

is completion of three months services as on 2nd May, 1986.

21. After going through the case record and evidence on behalf of the parties and considering the exhibits and points of arguments put forward on their behalf, I find much force in the plead taken by the workmen that he is being exploited severely by the management for so many years. I do not find any merit in the stand of management that he was contractual or part time worker.

22. Considering the facts and circumstances of this case, I hold the action of the management of Food Corporation of India in terminating the services of Shri Bhopal Tiwary instead of regularising the service is not legal and justified, Hence the management is directed to regularise the workman immediately w.e.f. receipt of the reference with continuity of service since, the direction of this Tribunal as per Ref. No. 251/1990, give him full back wages within 30 days from the publication of the award.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

का.आ. 318.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 11/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-22012/5/2008-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol now as shown in the Annexure in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 10.02.2016.

[No. L-22012/5/2008-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT :

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 11 OF 2008

PARTIES:

The management of 1&2 Incline,
Jhanjra Area, M/s. ECL

Vs.

Sri Sriram Bhar

REPRESENTATIVES:

For the management : Shri P. K. Goswami,
Ld. Advocate

For the union (Workman) : None

Industry : Coal State: West Bengal

Dated: 07.01.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/5/2008-IR(CM-II) dated 11.03.2008 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of M/s. ECL in dismissing Shri Sriram Bhar w.e.f. 22.02.2007 is legal and justified? If not, to what relief is the workman entitled?”

Having received the Order No. L-22012/5/2008-IR(CM-II) dated 11.03.2008 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case No. 11 of 2008 was registered on 17/26.03.2008 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out. Sri P. K. Goswami, Ld. Adv for the management is present but none appears on behalf of the workman/union.

On perusal of the case record I find that neither the reference case was registered on 17.03.2008 / 26.03.2008. Thereafter notices were issued to the parties on 10.04.2008, 24.05.2012, 15.10.2014 and 30.03.2015. The management filed their written statement on 31.07.2013. But the union never appeared before the Tribunal even for a single day. 41 days have been granted to the union so far but all are in vain. It seems that the union/workman is now not at all interested to proceed with the case further. As such the

case is closed and accordingly a 'No Dispute Award' is hereby passed.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

का.आ. 319.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 49/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-22012/280/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 319.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 10.02.2016.

[No. L-22012/280/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 49 OF 2006

PARTIES:

The management of Ratibati (R) Colliery under Satgram Area, M/s.. ECL

Vs.

Sri Chand Majhi

REPRESENTATIVES:

For the management : Shri P. K. Goswami,
Ld. Advocate, ECL

For the union (Workman) : Sri S. K. Pandey, General Secretary, CMC

Industry : Coal

State: West Bengal

Dated: 11.01.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/280/2005-IR(CM-II) dated 17.08.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Ratibati Colliery under Satgram Area of M/s.. ECL in dismissing Sri Chand Majhi from services w.e.f. 19.04.2005 is legal and justified? If not, to what relief is the workman entitled?"

Having received the Order No. L-22012/280/2005-IR(CM-II) dated 17.08.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 49 of 2006 was registered on 18.09.2006. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

The delinquent workman Sri Chand Majhi has filed written statement through his Union representative. He has stated in his written statement that he was in employment in the company as Loader having Man No. 110426 at Ratibati (R) Colliery under Satgram Area of M/s.. Eastern Coalfields Limited. He was absent from his duty with effect from 05.02.2001 to 30.07.2001, for which he was charge sheeted vide Charge Sheet No. RB/CS/PERS/MGR/2001/213/2675 dated 30.07.2001. He was absent due to sickness which was beyond his control. Being declared fit, the workman reported to management for resumption of his duty, but he was not allowed. The workman replied to the charge sheet and appeared before the Enquiry Officer. He also submitted his sick certificate for perusal of the Enquiry Officer. The workman was dismissed from service of the company vide dismissal order No. RB/AGT/PERS/05/649 dated 19.04.2005 by the Agent, Ratibati (R) Colliery under Satgram Area of M/s.. Eastern Coalfields Limited who was not empowered at all to dismiss any workman as per Certified Standing Order of the Company. It is surprising that Enquiry

Officer though submitted his report on 30.01.2003. But the workman was not allowed to resume his duty and was ultimately dismissed on 19.04.2005 i.e. after lapse of more than two years. The workman is sitting idle without any job for more than three years. His whole family is on the verge of starvation. The dismissal order of Sri Chand Majhi from service of the company is illegal unjustified and disproportionate punishment for the alleged misconduct. The workman has prayed that Management of Ratibati (R) Colliery under Satgram Area of M/s.. Eastern Coalfields Limited be directed to reinstate the workman with payment of full back wages with all consequential benefits.

Management never filed written statement. The Tribunal had no option except to proceed ex-parte against M/s.. Eastern Coalfields Limited. The learned predecessor of this Tribunal passed an order to proceed ex-parte on 20.11.2012 against Ratibati (R) Colliery under Satgram Area of M/s.. Eastern Coalfields Limited.

No document has been filed by either side. The delinquent workman has examined himself as witness. He has not been cross-examined by the management. Ratibati (R) Colliery of M/s.. Eastern Coalfields Limited has not filed any oral evidence.

Sri P. K. Goswami, the learned Advocate has filed authorization of M/s.. Eastern Coalfields Limited. I have heard the argument of Sri P. K. Goswami, the Learned Advocate on behalf of M/s. Eastern Coalfields Limited and Sri S. K. Pandey, the Learned Union representative on behalf of workman.

Sri S.K. Pandey has argued that due to sickness under compelling circumstances the workman Chand Majhi was absent from his duty from 05.02.2001 to 30.07.2001. He filed his medical papers regarding his sickness. He was not afforded to cross-examine the management witness nor he was allowed to adduce his defence evidence. Copy of enquiry report was not issued to him. Neither his explanation was called for after completion of enquiry. Even after submission of enquiry report on 30.01.2003 he was dismissed after two years and three months on 19.04.2005. He was dismissed by the Agent of the colliery who was not empowered to pass such dismissal order. On the other hand, Sri P. K. Goswami, the Learned Advocate of the Management has argued that it is the duty of a workman to prove his innocence. The workman is not entitled for any back wages. Back wages cannot be claimed as a matter of right.

The allegation of workman is that he submitted sick certificate, but it was not considered by the Enquiry Officer. The Enquiry Officer submitted enquiry report on 30.01.2003, but after lapse of two years and three months he was dismissed on 19.04.2005. The Agent of the Colliery is not empowered to dismiss him. All the enquiry proceedings were held in utter violation of principle of natural justice. M/s. Eastern Coalfields Limited has not

filed any documents regarding domestic enquiry. The Notice of Enquiry, copy of Charge Sheet, copy of Enquiry Proceeding, copy of Enquiry Report, copy of Explanation of Delinquent, etc. have not been filed by the M/s. Eastern Coalfields Limited. These documents are in custody of M/s. Eastern Coalfields Limited, and it ought to have been submitted by M/s.. Eastern Coalfields Limited. Due to non production of these vital documents, the Tribunal is bound to draw adverse presumption under section 114(G) of Evidence Act against M/s. Eastern Coalfields Limited that either Domestic Enquiry was unlawful being an utter violation of Principle of Natural Justice or there was no Domestic Enquiry at all against the delinquent workman.

The domestic enquiry commences with the service of the charge sheet. Before proceeding with the domestic enquiry against an offending workman, he must be informed clearly, precisely and accurately of the charges leveled against him. It is the duty of the employer to indicate the delinquent employee not only the precise nature of the charges, but also the documents, if any, upon which the charges are based. The charge Sheet should specifically set out all charges, which the workman is called upon to show cause and should also state all relevant particulars, without which he cannot defend himself. The delinquent workman must know what he is charged with and have the amplest opportunity to meet the charges and to defend himself by giving a proper explanation. After knowing the nature of the guilt, with which he is charged, otherwise it will amount to his being condemned unearthed. Any amount of evidence laid in the enquiry is no substitute for a charge sheet clearly setting forth allegation with sufficient precision and particulars, so as to enable the employee to defend himself which is the very purpose of a charge sheet. In a number of cases, the Hon'ble Supreme Court has held that an enquiry is not an empty formality, but an essential condition to the legality of the disciplinary order. Before the delinquent workman can be punished for misconduct, the employer should hold a fair and regular enquiry into the misconduct and dismissal without holding a regular enquiry would be an illegality. It is well settled that disciplinary enquiry as to be quasi-judicial enquiry, held according to the principle of natural justice and the Enquiry Officer has a duty to act judicially, because the charges of misconduct, being proved, will result not only depriving of livelihood of the workman but also will attach stigma to his character. The Hon'ble Apex Court in *State of U.P and another v/s C.S. Sharma* reported in A.I.R 1968, S.C. 158 has held that if no opportunity is given to delinquent to lead evidence, it was sufficient to vitiate the whole proceeding. Hon'ble Supreme Court in *Rishal Singh v/s State of Haryana & Others*. Reported in 2014, LAB-I.C., page-3482 has held that disciplinary authority is not expected to dispense with the disciplinary enquiry. Order terminating a member of police force from service without enquiry because he

was involved in corruption is illegal and Hon'ble Supreme Court set-a-side the Dismissal Order without enquiry.

Hon'ble Calcutta High Court in Ratan Bhattacharya v/s Union of India & Others reported in 2013, LAB-I.C., page-638 has held that even for minor penalty departmental enquiry is essential when charge has been denied by the workman.

In view of the law propounded by the Hon'ble Apex Court and Hon'ble Calcutta High Court even for minor punishment the departmental enquiry is must. Since no document has been filed by M/s. Eastern Coalfields Limited, it appears that delinquent has been dismissed from service without holding any enquiry, which is illegal and unjustified.

Natural justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Stick adherence to the principle is required, whenever civil consequence follow up, as a result of order passed. Natural justice is universal justice. In certain factual circumstance even non observance of the rule will itself result in prejudice. Thus this principle is of supreme importance.

When the charge is proved the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. But without holding any enquiry, the punishment of dismissal for alleged absence from duty of near about six months is quite shocking and disproportionate and it ought to be set aside. Since the workman has himself admitted in his written statement that he was absent due to sickness for near about six months, he ought to be punished under Certified Standing Order because unauthorized absent for more than Ten days is punishable. He ought to be punished with minor punishment. It is settled law that when dismissal is set aside being contrary to law, reinstatement is natural consequence.

Paramount question required consideration regarding payment of back wages where a workman whose termination is found to be illegal and unjustified, what amount of back wages he should be awarded.

As per section 106 of Evidence Act, it is the burden of workman to plead that he was unemployed during the period of dismissal. If he pleads that he was in gainfully employed during the period of dismissal, the burden shifts on the employer to prove that workman was gainfully employed during the period of dismissal. If employer succeeds in proving that workman was gainfully employed elsewhere during the period of dismissal, the employee concerned will not be entitled for back wages. But if employee pleads that he was not employed during the period of dismissal, but if it has not been disproved by the employer the delinquent employee will be entitled for back wages. The workman has pleaded in Para - 8 of his Written Statement that he was idle and without any job.

His whole family is on the verge of starvation. Even M/s. Eastern Coalfields Limited authority has not rebutted this allegation by filing written statement. Sri Chand Majhi has proved this fact in his Affidavit. While awarding back wages several factors should be considered viz; the length of service and age of the concerned employee, the possibility of getting alternate employment elsewhere. Length of service of the delinquent has not been pleaded in his written statement, but as per affidavit his age is 39 years. At this stage it cannot be expected that delinquent will be able to get job elsewhere. Therefore in this circumstance the concerned employee Chand Majhi will be entitled for full back wages from the date of dismissal. The Hon'ble Supreme Court in Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya and Others reported in 2013 LA.B. 4249 has held that where employer has acted in gross violation of principle of natural justice then concerned Tribunal will be fully justified in directing payment of full back wages. The Courts must keep in view that in all cases of wrongful / illegal termination of service, the wrongdoer is the employer and the sufferer is the employee / workman. There is no justification to give premium to the employer of his wrongdoing by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

Considering the whole facts and circumstances of the reference, discussed above, I come to the conclusion that the action of M/s. Eastern Coalfields Limited authority in dismissing Sri Chand Majhi from service is illegal and unjustified. I set-a-side the Order of Dismissal dated 19.04.2005 of Sri Chand Majhi. M/s. Eastern Coalfields Limited is directed to re-instate Sri Chand Majhi with the continuity of service. I think it appropriate that the concerned workman be imposed a punishment of stoppage of 2 (Two) increment with cumulative effect. It is further directed that M/s. Eastern Coalfields Limited shall pay full back wages to Sri Chand Majhi from the date of Order of Dismissal i.e. from 19.04.2005 till his reinstatement. The order will be enforced within Two months after publication under section 17 of the Industrial Disputes Act, 1947.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

का.आ. 320.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/

श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 99/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2016 को प्राप्त हुआ था।

[सं. एल-22012/295/2007-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol now as shown in the Annexure in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 10.02.2016.

[No. L-22012/295/2007-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT :

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 99 OF 2007

PARTIES:

The management of MIC-Jhanjra Project,
Jhanjra Area of M/s. ECL

Vs.

Sri Hari Bouri

REPRESENTATIVES:

For the management : None

For the union (Workman) : Sri. S. K. Pandey, General
Secy., CMC

Industry : Coal State: West Bengal

Dated : 13.01.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/295/2007-IR(CM-II) dated 26.11.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of M/s. ECL in dismissing Sri Hari Bouri w.e.f. 12.01.2007 is legal and justified? If not, to what relief is the workman entitled?”

Having received the Order No. L-22012/295/2007-IR(CM-II) dated 26.11.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 99 of 2007 was registered on 06.12.2007. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

In brief, the workman has stated in his written statement that he was in employment of the company as General Mazdoor at MIC-Jhanjra Project, Jhanjra Area of M/s.. Eastern Coalfields Limited. Workman Sri Hari Bouri fell sick from 15.06.2006. He did not attend his duty. He informed the management about his sickness. When the workman reported for his duty, he was not allowed, rather he was dismissed from service without serving Charge Sheet copy, Dismissal Letter, etc. The workman was not served with Notice of Enquiry or Charge Sheet. Enquiry proceeding proceeded ex-parte. The workman was not afforded an opportunity to prove his innocence. Second Show Cause notice was not issued to him before awarding punishment. All the enquiry proceedings and orders were in violation of principle of Natural Justice. The punishment of dismissal is very harsh. He is sitting idle without any employment anywhere. The management's representative appeared as a witness against the workman, which are all false. The dismissal of Sri Hari Bouri, workman is illegal and unjustified. He belongs to downtrodden community of the Society. He is without job, his whole family is dying without meal. The workman has prayed that the order of dismissal be set-a-side and management of MIC-Jhanjra Project, Jhanjra Area of M/s.. Eastern Coalfields Limited be directed to re-instate the workman with payment of full back wages with all consequential benefits.

The management on the other hand, has stated briefly in his written statement that concerned workman Sri Hari Bouri was absent from duty from 15.06.2006 without any reason or information. He did not pray for any leave. His absence was unauthorized. He was issued charge sheet No. ACT/JNR/MIC/P/06/1364 dated 30.7.2006 under Clause 26.23 and 26.29 of Standing Order seeking clarification of his absence from 15.06.2006. The concerned workman did not give response to the charge sheet. The management ordered an enquiry. The concerned workman did not attend the enquiry. Therefore the enquiry proceeded ex-parte and the charges levelled against him was established beyond all reasonable doubt. Sri Hari Bouri was present on duty for 172 days in 2003, 166 days in 2004 and 34 days in 2005. He was punished one time in 2002 and two times in 2005. Keeping in view the findings of enquiry report, last three

years physical attendance, management issued him second show cause notice as to why action should not be taken against him along with the proceedings and findings of enquiry report asking clarification from him. But Sri Hari Bouri did not send reply to the second show cause notice. The management has no alternative as there were no favourable circumstances, but to terminate the service of Sri Hari Bouri. Accordingly Sri Hari Bouri was terminated from his service vide letter No. GM/JNR/PER/08/2007/2504 dated 13.01.2007. The reference is bad in law. The Eastern Coalfield Limited has prayed that the action of management is legal and justified. The workman is not entitled for any relief.

The workman has filed two documents, copy of Enquiry Proceedings and copy of Charge Sheet dated 30.07.2006. The Eastern Coalfields Limited has not filed any documents.

The workman has filed affidavit in his oral evidence. He has been cross-examined by the management. The management of Eastern Coalfields Limited has not filed any oral evidence.

I have heard the argument of Sri S. K. Pandey, union representative, on behalf of workman. The management of Eastern Coalfields Limited has not authorized any Advocate to represent his case. Neither any Officer appeared on behalf of Management to represent his case. The reference is of the year 2007. After service of notice, the management of Eastern Coalfields Limited has not taken care to file Vokatnama or Authorization of his Advocate to represent the Eastern Coalfield Limited authority. Therefore advocate of M/s. Eastern Coalfield Limited was unable to argue the case. But reference is being decided on merit, rather than ex-parte.

Sri S. K Pandey, the learned Union representative has argued that workman Sri Hari Bouri was absent only for one and half months. He was never issued any notice of enquiry. The departmental enquiry proceeded ex-parte. He was never given any opportunity to cross-examine the management's witness. There is clear violation of natural justice. None can be dismissed without proper and valid enquiry.

It is admitted fact that Sri Hari Bouri, the delinquent workman was in employment at MIC-Jhanjra Project, Jhanjra Area of M/s. Eastern Coalfields Limited. It is also admitted fact that delinquent Sri Hari Bouri was absent from duty since 15.06.2006. None of the party to the reference has pleaded in their written statement that how many days the delinquent workman was absent. As per the documents filed by the workman, it appears that the workman was issued charge sheet on 30.07.2006. Till issuance of charge sheet he was absent for about one and half months. Though management of MIC-Jhanjra Project, Jhanjra Area of M/s. Eastern Coalfields Limited has pleaded in his written statement that workman did not reply to charge sheet,

whereas the delinquent workman has denied on oath in his affidavit that notice was not issued to him. If notices were issued by MIC-Jhanjra Project, Jhanjra Area of M/s. Eastern Coalfields Limited to concerned workman, then copy of postal receipt regarding service of notice ought to have been submitted by the M/s. Eastern Coalfields Limited authority. There is no documentary or oral evidence on behalf of M/s. Eastern Coalfields Limited regarding sending of notice of enquiry. In absence of such notice it cannot be assumed that the notice of enquiry was sent to workman. Even M/s. Eastern Coalfields Limited has not pleaded in his written statement on which date notice was sent to workman and on which date it was served on delinquent. Domestic enquiry cannot be held without service of notice.

As per requirement of natural justice: (1) Enquiry must be held by a person who is not biased in favour or against either of the parties or (2) Delinquent employee should be given a fair opportunity to adequately representing his case by hearing the evidence in support of the party and to cross-examine the witness produced against him and also be allowed to rebut the evidence laid against him by examining the witnesses including himself if he so wishes on any relevant matter.

Order regarding appointment of Enquiry Officer has not been filed by the M/s. Eastern Coalfields Limited which is essential to conform the domestic enquiry. On perusal of copy of proceedings filed by the delinquent workman, it appears that due to absence of delinquent, enquiry was adjourned on 29.08.2006, 14.09.2006 and 04.10.2006. Finally enquiry was conducted ex-parte on 26.10.15. Due to absence of workman enquiry proceeded ex-parte. Even if enquiry proceeded ex-parte, still then Enquiry Officer ought to have fixed a date for defence evidence of workman. An opportunity to put defence to workman must have been provided, but it appears from Enquiry proceeding that opportunity for putting the defence was not provided to delinquent workman. It is clear violation of principle of natural justice. No person can be condemned unearthed. There is absence of enquiry report, explanation of delinquent after enquiry and dismissal order. The enquiry report and dismissal order are the natural documents of M/s. Eastern Coalfields Limited and it ought to have been provided by the M/s. Eastern Coalfields Limited to file of reference. For non filing of these vital documents compels the tribunal to draw adverse presumption against the M/s. Eastern Coalfields Limited under section 114(G) of the Evidence Act.

If copy of enquiry report has not been filed on the file of reference of Tribunal then it will be presumed that without enquiry report, the workman was dismissed by the M/s. Eastern Coalfields Limited. The workman was not provided opportunity to represent his case after completion of enquiry, which is essential ingredients of principle of natural justice. While a right to represent against finding in the report is part of the reasonable opportunity available

during the first stage of enquiry viz. before the disciplinary authority taken into consideration the finding in the report. When the Enquiry Officer is not the disciplinary authority, the delinquent employee has right to receive copy of the Enquiry Officer's report before the disciplinary authority arrived at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. A denial of Enquiry Officer's report to delinquent employee before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principle of natural justice.

Hon'ble Supreme Court in *Managing Director, ECIL, Hyderabad v/s B. Karunakar* (AIR 1994 SC 1074) has held "when the Enquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Enquiry Officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges leveled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

When the charge is proved, the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of the charge. The disciplinary authority is to decide a particular penalty as specified in the Model Standing Order. Host of factors go into the decision making while exercising such discretion which include gravity of misconduct. The tribunal while on perusal of case would obviously examine as to whether the punishment imposed by the disciplinary authority is reasonable or not. If Tribunal finds that punishment is shockingly disproportionate in comparison to the gravity of misconduct, it can reduce punishment. Without holding domestic enquiry is violation of principle of natural justice, the punishment of dismissal for mere absence of one and half months is shockingly disproportionate to the alleged misconduct. Though on perusal of charge sheet it is clear that delinquent workman has been previously absent also for which he has been adequately punished, but on mere consideration of post conduct for which delinquent has been already punished without holding valid and lawful domestic enquiry. The punishment of dismissal is shockingly disproportionate and is liable to be set-a-side, though the delinquent workman should not remain unpunished.

A question is still remains to be considered whether a workman whose termination is found to be illegal, what amount of back wages he should be awarded. It is settled

law that if dismissal is set-a-side the relief of reinstatement is natural consequence so far as back wages is concerned. A workman whose service was terminated and who is desirous of getting back wages is required either to plead before the court that he was not gainfully employed or on employment of lesser wages. If the employer wants to avoid payment of full back wages then he has to plead and to lead evidence that the workman was gainfully employed and was getting wages. This is so because it is settled law that the burden of proof of existence of a particular fact lies on the person who is making positive averment about its existence. Therefore once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed or getting the same or substantially the smaller emolument. It is always easier to prove a positive fact than to prove a negative fact. The workman has pleaded in para-8 and para-13 of his Written Statement that he was without any employment. In the affidavit the workman has stated that he does not have any source of income. These fact and evidence have not been rebutted in the written statement by the M/s. Eastern Coalfields Limited or by adducing evidence. Therefore, the delinquent workman Sri Hari Bouri is entitled for full back wages from the date of his termination. Hon'ble Supreme Court in *Bhuvnesh Kumar Dwivedi v/s M/s. Hindalco Industries Ltd* reported in 2014 LAB I.C. 2643 has held that in case of illegal retrenchment, the workman is entitled to full back wages from the date of termination of his service till date of his reinstatement. In view of law laid down by Hon'ble Supreme Court, the workman is entitled to full back wages from the date of his termination till his reinstatement.

Considering the whole facts and circumstances of the reference as discussed above, I come to the conclusion that the action of M/s. Eastern Coalfields Limited in dismissing Sri Hari Bouri from service is illegal and unjustified. I set-a-side the Order of Dismissal dated 12.01.2007 of Sri Hari Bouri. M/s. Eastern Coalfields Limited is directed to reinstate Sri Hari Bouri with the continuity of service. I think it appropriate that the delinquent workman be imposed a punishment of stoppage of 5(five) increments with cumulative effect. It is further directed that the concerned workman will get full back wages from the date of Order of Dismissal i.e. from 12.01.2007 till his reinstatement. The order will be enforced within two months after publication under section 17 of Industrial Dispute Act, 1947.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

SCHEDULE

dk-vk- 321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय आसनसोल के पंचाट (संदर्भ संख्या 52/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था।

[सं. एल-22012/503/1999—आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 52/2000) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Eastern Coolfields Limited, and their workman, received by the Central Government on 10/02/2016.

[No. L-22012/503/1999-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL****PRESENT:** Sri Pramod Kumar Mishra, Presiding Officer**REFERENCE NO. 52 OF 2000****PARTIES:** The management of Khas Kajora Colliery, M/s. ECL.

Vs.

Sri Mangal Paswan

REPRESENTATIVES:

For the management : Shri P. K. Das, Ld. Advocate, ECL

For the union (Workman) : Shri Rakesh Kumar, President, KMC

Industry : Coal State : West Bengal

Dated: 15.01.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/503/1999-IR(CM-II) dated 28.06.2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

“Whether the action of the management of Khas Kajora Colliery of M/s. ECL in not accepting the mid point of age of Sh. Mangal Paswan, assessed by the Apex Medical Board is legal and justified? If not, to what relief the workman is entitled?”

Having received the Order No. L-22012/503/1999-IR(CM-II) dated 28.06.2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case No. 52 of 2000 was registered on 17.08.2000 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out. Sri Rakesh Kumar, President of the Union (KMC) appears on behalf of the workman/union but none appears on behalf of the management.

The case is fixed for ex-parte evidence of the workman. But, even after so many dates workman is unable to file evidence even he never appears in the court. The reference is of the year 2005. Even after lapse of 15 years, the workman has not filed evidence. It appears that the workman is not interested in contesting the reference. As such the case is closed and accordingly a ‘No Dispute Award’ is hereby passed.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

dk-vk- 322.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 91/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था।

[सं. एल-22012/111/2006—आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 91/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Bankola Area, M/s. ECL, and their workman, received by the Central Government on 10/02/2016.

[No. L-22012/111/2006-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 91 OF 2007

PARTIES:

The management of Kumardihi 'B' Colliery, ECL

Vs.

Sri Bishwanath Shaw

REPRESENTATIVES: For the management:

Shri P. K. Goswami, Ld. Advocate

For the union (Workman) : Sri Bishwanath Shaw
(workman)

INDUSTRY: COAL

STATE: WEST BENGAL

Dated: 19.01.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/111/2006-IR(CM-II) dated 24.10.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of M/s. ECL in not correcting the date of birth of Shri Bishwanath Shaw and consequent retirement on superannuation is legal and justified? If not, to what relief is the workman entitled?”

Having received the Order No. L-22012/111/2006-IR(CM-II) dated 24.10.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 91 of 2007 was registered on 20.11.2007 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of

witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out. Sri P. K. Goswami, Learned Advocate is present on behalf of the management and files his authorization but none present on behalf of the union/workman.

On perusal of the case record I find that neither the workman nor his authorized advocate is appearing before the tribunal after 01.06.2010. Since then 28 dates were granted but to no effect. Registered notice was issued to the workman on 03.01.2012 and 10.09.2014. The last notice was sent to the workman on 10.09.2014 but the same has returned back with the remarks that the workman is 'dead'. Since the workman is supposed to be dead and his representative also not appearing before the court I think it proper and just to close this case. As such the case is closed and a 'No Dispute Award' is hereby passed accordingly.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

clk-vk- 323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 12/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था।

[सं. एल-22012/23/2001-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Limited, Pench Area, and their workman, received by the Central Government on 10/02/2016.

[No. L-22012/23/2001 - IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/12/2002

Chief General Secretary,
 MPKKMP (HMS), PO Junnardeo,
 Distt. Chhindwara (MP) ...Workman/Union

Versus

General Manager,
 WCL, Pench Area, PO Parasia,
 Distt. Chhindwara (MP) ...Management

AWARD

Passed on this 18th day of December, 2015

1. As per letter dated 27-12-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-22012/23/2001-IR(CM-II). The dispute under reference relates to:

“Whether the action of the Manager, Vishnupuri Mine No.1 of WCL, PO Parasia, Distt. Chhindwara (MP) in transferring Shri Naresh and 8 other tub loaders from Vishnupuri Mine No.1 to Vishnupuri U/G Mine No.2 of WCL w.e.f. 7-1-97 and converting them from Piece rated to time rated without protecting their basic pay is legal and justified? If not, to what relief these workmen are entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary, HMS at 4/1 to 4/4. Case of Ist party Union is that dispute is raised claiming protection of wages as per rules in respect of 9 Ist party workmen working as piece rated tub labour Grade V/A. Converted to time rated since 31-10-95. That the management was aware about workman. There is no ambiguity in terms of reference. Those workmen were appointed as tub loader on piece rated. They were posted at Vishnupuri Mine No.1, they were transferred to Mine No.2. after their transfer from Vishnupuri No.1 to Mine No.2, they were converted from piece rated to time rated workmen. They were designated as cableman instead of tub loader. They were doing similar nature of work. The workers related to dispute were paid salary prior to their transfer on administrative ground Rs.104.093 per day. After their transfer, they were paid salary basic wages Rs.68.90 per day. Said action of the management amounts to unfair labour practice. As per order dated 27-1-97, management fixed their basic pay at Rs.68.90 on the ground that workers had given consent to work on time rate. The action of management is in colourable exercise of powers converting

workman from piece rate to time rate. It also amounts to victimization of workers.

3. It is further submitted that on 8-1-97, Mines Manager Vishnupuri Mine No.2 displayed notice inviting applications from piece rated tub loaders who were interested to work on time rated. Signatures of workers were obtained on proforma concerned for work allotted to them. The workers never given consent to accept lower wages. Such exercise of management not assist to evade legal liabilities of pay protection converting workers from piece rate to time rate categories. Workers on their transfer from Mine No.1 to Mine No.2 were placed in cadre of cableman at time rate basis and while fixing their pay, it is not proper. It is reiterated that the workers have not given consent to pay them salary without protection of pay. The total pay packet for workman should not be less than their pay before conversion from piece rate to time rate. On such ground, Ist party workman are praying conversion of workman from piece rated to time rated without protection of pay is illegal.

4. 2nd party filed Written Statement at Page 3/1 to 3/6 opposing claim of Ist party. 2nd party submits that reference is vague. The terms of refer about Naresh and other tub loaders, their service particulars, names of the claimants are not shown in the reference order. In absence of the names and particulars of beneficiaries, adjudication of reference is not possible. The reference is incapable for adjudication.

5. That WCL is company registered under Company's Act. WCL has several areas headed by Chief General Manager etc. Pench Area has collieries known as Nehria, Tisgora, Mathni, Vishnupuri No.1, II, Shivpuri Open Caste, Rawanwara Khas, Ganpathi, Bhagipani Open Caste, Iklehra and Gajando. All those colliery are situated within the radius of 50 kms. The service conditions of workers in the mine are covered by NCWA. Transfer order from one to another unit is service condition of employees, transfer is being made in administrative interest, request of employees. Agreement was arrived between Union and management on 21-10-95 in connection of pay fixation of employees working as piece rated converted to time rated monthly rated employees. The fixation of employees working as piece rated, time rated was done as per the agreement. Vishnupuri Mine No.2 is mechanized mine. The workers designated as tub loader were not required there, hence the management displayed notice dated 8-1-97 inviting applications from willing workers designated as tub loader at Vishnupuri Underground Mine No.2 to work in different time rated jobs in another collieries of Pench area. Such notice clearly mentioned that such labours who will apply for time rated job will be paid basic pay commensurate to category. In response to said notification, tub loaders

including claimants under reference submitted their option to work in time rated job and accepted wages of time rated category.

6. It is further submitted on basis of consent given by claimants/ tubloaders in pursuance of notice dated 8-1-97 they were deployed in different time rated jobs as per settlement dated 31-10-95. The details of those employees are given in Para-10 of the Written Statement. It is reiterated that as per Clause I of Agreement dated 31-10-95, claimants are not entitled for protection of basic pay of piece rated loader. It is denied that those workmen were transferred to time rated job on administrative ground of the management. The office order dated 7-1-97 transfers were made on the option tendered by workmen in the light of order dated 7-1-97, management issued order dated 27-1-97. On such ground, 2nd party submits that dispute under reference has no merit and deserves to be answered in favour of management.

7. 2nd party filed additional Written Statement at Page 5/1 to 5/4 reiterating its contentions in original Written Statement. It is contented that work of tub loader is hazardous. The emoluments being paid to workers as tub loader piece rated depend upon output given by workman whereas job of cableman is monthly rated and they can prescribed for the said cadre. It is denied that transfers of workmen were made on administrative ground from Vishnupuri Mine No.1 to 2. While performing job of cableman, the workman cannot claim wages of tub loaders. The conversion took place as per option given by workmen. As workmen not interested to work as cableman, they should have represented to go back to their original job. Pay fixation is done as per settlement dated 21-10-95. The wages of workmen were rightly fixed at the basic pay of their respective categories in which they were deployed. If pay protection is given to such workmen, it will create industrial unrest. Piece rated employee will apply for time rate if pay protection is given to workman. No one is interested to do hazardous job. Workmen were aware of wages of piece rated tub loader and wages of monthly rated cableman. They have submitted option with their eyes open. Workmen were performing job of cableman. They were paid wages for said post.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) Whether the action of the Manager, Vishnupuri Mine No.1 of WCL, PO Parasia, Distt. Chhindwara (MP) in transferring ShriNaresh and 8 other tub loaders from Vishnupuri Mine No.1 to Vishnupuri U/G Mine No.2 of WCL w.e.f. 7-1-97 and

converting them from Piece rated to time rated without protecting their basic pay is legal and justified?

- (ii) If not, what relief the workman Workmen are not is entitled to?" entitled to any relief.

REASONS

9. The Union has raised present dispute challenging denial of pay protection to all those 9 workmen. Identical affidavit of evidence of workmen Shri Shankarlal, Naresh, Enullah, Ayub Khan, Ashok Kumar Dehariya, Riyaz Hussain are filed. In cross-examination, Shankarlal says he was appointed as piece rated tub loader in January 1994. He claims ignorance of settlement dated 31-10-95. He was member of Union. The settlement by Union applies to him. He did not complaint about forcibly obtaining his consent for his conversion from piece rated to time rated. Shri Naresh in his cross-examination says he had not submitted any application for transfer to Shivpuri Mine No.2. he admitted his signature on Exhibit M-1. He claims ignorance about the settlement between management and Union about fixation of pay. He also claims ignorance how the pay of tub loader time rated is fixed. He was working as tub loader in the mine. The work of tub loader is not available in said mine. Management had displayed notice that as work of tub loader was not available in mine, the workers desiring to work as time rated in other mines may submit option. That he had not submitted application as per said notice. He had no grievance till 1997 to 2002 till the dispute was raised.

10. Shri Enullah in his cross-examination says he was working as tub loader, pay slip Exhibit W-1, W-2 are produced. He would retire in the year 2021. His age shown in affidavit of evidence is correct. He was unable to tell about merger of HMS Union. While he was working as tub loader, he was receiving wages of said post. The work of tub loader is in underground mines. He denies that work of time rated is at mine surface. He admits that work of tub loader is difficult than work of time rated. The time rated tub loader is paid wages of said category. The piece rated tub loader works more. He gets more wages. He had not received order to work as time rated. He had not submitted option for time rated category. However he admitted his signature on Article A-1. As per notice dated 8-1-97, management had called option for time rated workers. He admits that post of tub loader was not vacant in the mine. He claims ignorance about the settlement between management and Union.

11. Shri Ayub Khan in his cross-examination says that his transfer from Vishnupuri Mine No.1 to II was on administrative ground. Work of tub loader was continuing in Vishnupuri Mine No.1. After his transfer in 1997 in Mine

No.2, he was working as cableman on time rated basis. Written order was not received by him for working as cableman. That he had not complained about forcibly obtaining his consent by management.

12. Shri Ashok Kumar Dehariya in his cross-examination says he was working on piece rated basis. Exhibit W-3,4 are the pay slips. He claims ignorance about merger of Union. He was working as tub loader in Vishnupuri Mine No.1. he was getting wages as tub loader, piece rated. He was getting more wages when work was more. In time rated category, similar pay is paid. The work of tub loader is different. He admits his signature on Exhibit M-2 and explained that he signed on it on say of Shri Gupta. He claims ignorance about the settlement between management and Union. He had complained about his conversion to time rated category on 7-1-97. He claims ignorance what action was taken on his complaint. The evidence in cross examination of Shri Riyaz is also similar to all those workers.

13. Management has filed affidavit of evidence of Shri P.Subramani. management's witness devoted his affidavit about settlement between management and Union dated 21-10-95 in connection of pay fixation of employees working as piece rated converted to time rated, monthly rated. That as per notice dated 8-1-97, applications were invited from willing workers, tub loaders in Vishnupuri Underground Mine No.2. the claimants had given their option. They were deployed as cableman-III, Shivdayal had not joined as tub loader. He was deployed as cableman III. After deployment, basic wages were fixed Rs.82.38. Clause I of the agreement dated 1-10-95 is reproduced in his affidavit. Management's witness in his cross admits that any notification issued by office bears the date and number. Exhibit M-3 does not bear such number. The document shown to him is relieving order of employees marked Exhibit M-4. Document M-6 is admitted. It is circular dated 3-3-99 issued by Area Office of WCL. In pay slip Exhibit W-1 to W-4, the wages of tub loader on piece rated basis are shown Rs.104.93 of Shri Ashok Kumar, Faliram, Ayub Khan. Documents Exhibit M-3 is notice dated 8-1-97 inviting options from tub loader for time rated work. Said notice finds clear reference that time rated category workers would be entitled to get wages of the category. Exhibit M-1 is option given by Shri Naresh. Exhibit M-5 is order of transfer finds clear reference that the transfer is being affected on administrative ground. Employees are entitled for transfer benefits such as TA/DA and joining time. Similar reference is found in Exhibit M-4 relieving order. The order dated 27-1-97 produced on record. Claimants were posted as cableman Cat-III. It is clearly mentioned in said order that the workmen would be entitled to initial wages Rs.68.90 per day. Since workmen were relieved and working in time rated category from 27-1-97, they had not complained about their options were forcibly obtained by the management.

All the workers received wages of time rated category till the dispute was raised in 2002. The evidence clearly shows that workmen had aquised to work as time rated and wages prescribed for the category as per order dated 27-1-97. The dispute is raised by Union in 2002 and the workmen tried to claim that they had not given option appears afterthought.

14. Copy of settlement dated 31-10-97 is produced at Exhibit M-1. Clause 11 of said settlement provides- in case of monthly rated and excavation where rates are higher than piece rated, the mid point fixation will not be applicable. As per order dated 27-1-97, claimants were posted as cableman III, they were not doing work of tub loader. Their claim for protection of pay as piece rated tub loader cannot be upheld. The evidence is clear that work of piece rated is difficult than work of time rated. For the reasons discussed above, I record my finding in Point No.1 in Affirmative.

15. In the result, award is passed as under:-

- (1) The action of the Manager, Vishnupuri Mine No.1 of WCL, POParasia, Distt. Chhindwara (MP) in transferring ShriNaresh and 8 other tub loaders from Vishnupuri Mine No.1 to Vishnupuri U/G Mine No.,2 of WCL w.e.f. 7-1-97 and converting them from Piece rated to time rated without protecting their basic pay is proper and legal.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

clk-vk- 324.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 344/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था ।

[सं. एल-22012/245/1999-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 344/1999) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Coolfields Limited, and their workman, received by the Central Government on 10/02/2016.

[No. L-22012/245/1999 - IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/344/99**

General Secretary,
Bhartiya Koyla Mazdoor Sangh (BMS),
PO Haldibadi,
Distt. Surguja (MP) ...Workmen/Union

Versus

Chairman cum Managing Director,
South Eastern Coalfields Ltd.,
Seepat Road, Bilaspur (MP) ...Management

AWARDPassed on this 14th day of December, 2015

1. As per letter dated 22-11-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/245/99/IR(CM-II). The dispute under reference relates to:

“Whether the action of the Chairman cum Managing Director, SECL, Seepat road, Bilaspur (MP) in not promoting some security personnel from Sr. Security Guard/Arm guard T&S Grade “F” to Head Security guard/ Hawaldar T&S Grade “E” due to wrongly maintained seniority list is legal and justified? If not, to what relief is the concerned workmen entitled?”

2. After receiving reference, notices were issued to the parties. Secretary of BMS Union filed statement of claim at Page 9/2 to 9/6. Case of Ist party Union is that dispute pertains to 11 workmen denied promotion by management. That management formed provisional seniority list on 5-5-97 of security guards, Armed Guard, T&S Grade I. The provisional list was not shown to the workmen. They could not raise objection about incorrect placement in seniority list. Without giving any opportunity, the provisional list was made final Seniority list on 8-10-97. Final seniority list was also not shown to the workmen. They could not submit any representations regarding their incorrect place in the seniority list. That the promotion order was issued on 20-11-97. Junior to Ist party workmen were promoted. Workmen submitted representation after the order of promotion. The promotions were given as per seniority list dated 8-10-97. That date of initial appointment of Laxman Singh was mentioned 4-1-91. Date of appointment was treated 30-4-83. The date of appointment of Shri M. Tiwari has mentioned in seniority list 11-7-78. His date of appointment was treated as 14-5-90. The bifurcation of date of birth was difficult to be understood. The seniority is always from date of appointment when workman start their duty on particular posts. The adaptation is unique criteria

for preparation of seniority list to place blue eyed boy by the management at the top of the list of seniority list. In spite of the objections, seniority list was made final. The promotions to juniors were given. Management adopted baseless and arbitrary criteria of seniority. On such ground, Union prays for setting aside order of promotion dated 20-11-97 and promotions be made after preparing fresh seniority list.

3. 2nd party filed Written statement on 4-8-2010 opposing claim of Union. Preliminary objection is raised by 2nd party that order of reference is vague as the particulars of juniors to the Security Personnel claimed for promotion is not disclosed. The vague reference is not tenable. The terms of reference is highly prejudicial to the management as appropriate Government has come to the conclusion that seniority list has been wrongly maintained. The dispute raised is highly belated. Seniority cannot be challenged after long lapse of time. The particulars of beneficiaries are not given. Reference is not tenable. Union filed statement of claim referring to the documents. However any of the documents are not supplied to management as per the ID Rules 1957. The application for better particulars was filed by the management. Union refused to supply those particulars. In Para 5 of the statement of claim, it is alleged that juniors are given promotion as Security Guard, Hawaldar in Basic Pay Rs.1826-2666. Since Junior persons are not impleaded as party, the promotions are covered by cadre scheme for security guard, Arm Guards on recommendation of DPC. The DPC considered final seniority list. The promotions are recommended on merit and seniority list. The cut out or datum lies was not discussed by the management with Union Representative prior to the DPC taking decision. It is managerial function. The promotions to eligible persons were given on recommendations of DPC. 2nd party denies that seniority list was prepared without considering objections of the workers. It also denies that claimants raised any objection to the seniority list when the objections were called. It is reiterated that any objections were not submitted to the provisional seniority list of final seniority list. The promotions of security guard were given on recommendation of DPC. All adverse contentions of Union are denied.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | | |
|-----|--|----------------|
| (i) | Whether the action of the Chairman cum Managing Director, SECL, Seepat road, Bilaspur (MP) in not promoting some security personnel from Sr. Security Guard/Arm guard T&S Grade “F” to Head Security guard/ Hawaldar T&S Grade “E” due to wrongly maintained | In Affirmative |
|-----|--|----------------|

seniority list is legal and justified?

- (ii) If not, what relief the workmen is entitled to?"

Workmen are not entitled to any relief.

REASONS

5. Union has raised present dispute. The terms of reference pertains to denial of promotion to some security personnel from Sr. Security Guard/Arm guard T&S Grade "F" to Head Security guard/ Hawaldar T&S Grade "E" due to wrongly maintained seniority list. The order of promotion is produced at Exhibit W-2. Said document is admitted by 2nd party. Ist party Union not adduced any evidence. The evidence of Ist party Union was closed on 5-2-2015.

6. Management filed affidavit of evidence of Shri Sanjiv Kumar Jha supporting contentions of 2nd party management in the Written Statement. The documents Exhibit M-1 to M-7 are admitted in evidence from witness of the management. Ist party remained absent and failed to cross-examine management's witness. Management's witness has reiterated that provisional seniority list was displayed at notice board. The final seniority list was also displayed. Promotions were given on recommendation of DPC considering the seniority list. Said evidence remained unchallenged. Cadre Scheme is produced at Exhibit M-1. Provisional seniority list is produced at Exhibit M-2. Order of promotion is produced at Exhibit M-4 shows that promotions were given to the employees on recommendation of DPC. Exhibit M-5 is office order issued. As Ist party Union has failed to participate in reference and adduce evidence in support of the claim under reference, action of management cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

dk-vk 325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट वाद संख्या 3/2015 (संदर्भ संख्या 138/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था ।

[सं. एल-22012/170/1996—आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Complaint No. 3/2015 (Arising out of Ref. 138/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of FCI, and their workman, received by the Central Government on 10/02/2016.

[No. L-22012/170/1996 - IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

In the matter of a Complaint u/s 33(a)
of I.D. Act, 1947

COMPLAINT NO. 3/2015

(Arising out of Ref.No.138/97)

Ministry Order No. 22012/170/96-IR(C-II)

Vijayendra Kumar, Ex-Manager (D)
Food Corporation of India
Area Office, Exhibition Road Patna, Presently
Residing at House No. 4, Road No.5
Srikrishna Nagar, Patna -1 —Complainant

Vrs

Executive Director, East Zone
Food Corporation of India
10-A, Middleton Row
Kolkata - 71 —Opposite party

Present :- Sri Ranjan Kumar Saran Presiding Officer

Appearances:

For complainant : Sri Vijayendra Kumar
For opposite party : Sri D K Sethi, AGM, RO, FCI,
Bhubneshwar

Industry :- Food

Dated. 22/01/ 2016

AWARD

2. This case is filed by the complainant under section 33A of the I. D. Act against his penalty of reduction of rank from Manager (D) to AG I (D) on initial pay scale by the Opp. Party. During pendency of Complaint case no. 2/14 as well as Ref no 138 of 1997 was pending before this Tribunal and the complainants concerned was connected to the said dispute as such it was mandatory on the part of the Opp. Party to take prior permission from this Tribunal

as per Sec 33(1) of the ID Act 1947 before changing the condition of service but the Opp. party has not taken prior permission, therefore, the order of penalty is illegal & unjustified.

3. It is submitted by the applicant that, beside the above it was also submitted that a charge sheet was issued on 30.01.2014 and an enquiry officer was appointed but the complainant was not given opportunity to examine defence witnesses and was also denied to file defence documents and the disciplinary authority after receipt of the inquiry report passed the order of penalty of reduction to the post of AG I(D) in the initial scale of pay even without providing copy of the IO report and thus the complainant was not given any opportunity to represent over the finding of IO and principle of natural justice was grossly violated.

4. It is further submitted that the order of the penalty has been given retrospective effect, which is also illegal. The fairness of enquiry was also challenged by the complainant and the Opp. party was directed to adduce evidence to justify the fairness & propriety of the domestic enquiry. Accordingly the Opp. party with a view to justify the fairness of the enquiry has examined inquiry officer who has admitted that the complainant was not allowed to examine defence witness and his prayer for production of defence document was also refused. He has further said that the regular enquiry was fixed on 9.01.2015 and the same was concluded on the same day. After hearing both the parties, the enquiry was held unfair & improper and again Opp. party was given an opportunity to lead additional evidence to justify the charges against the complainant. Three witnesses were again examined by the Opp. party but they were of a formal nature and failed to support the charges and said nothing about the subject matter of charges, enquiry & punishment.

5. It is also submitted by the applicant that, on the other hand four DWs were examined on behalf of the complainant in support of his case and they have said specifically and consistently that the complainant was not actually relieved from Bihar Sharif to Bhubneshwar on 25.08.2012 and the charges against him is not correct. DW has further said that the complainant was paid salary for the month of Sep'12 from Patna as such question of his relieving on 25.08.2012 does not arise. He has further said that the name of the complainant was available in the payroll of Patna up to 31.01.2014 till the date of his retirement and his name was transferred to Orissa region only on 31.01.2014 at 18.42.00 PM i.e. after retirement of the complainant as such allegation about wilful disobedience & non joining at Bhubaneshwar is not correct rather it is false. DW has further said that complainant was not under the control of GM Odisha and as such the charge sheet dated 30.01.2014 is illegal and any inquiry on the basis of it is also illegal. They have further said that the in case of complainant the provision laid down in chapter 16 of FCI Storage Manual

was not complied as such he was not relieved from DO Patna mere on the ground of service of transfer order. There is no cross examination by the Opp. Party on these points.

6. It is further submitted by the applicant, that Exhibit-W- 1 to W- 14 are filed by the complainant in support of his case and exhibited with the consent of the Opp. Party. The Opp. Party has not denied any of the statement made in the complaint petition of the complainant. Opp. Party has not filed any WS or any rejoinder to WS of the complaint. The sole defence of the Opp. Party is that the order of transfer was served to the complainant on 27.08.2012, therefore, he stood relieved but the same is against the provision of FCI storage manual as no substitute was posted to take charge from him which is evident from the transfer order itself. This fact is also admitted that the complainant was a depot in charge of FCI at Bihar Sharif and was holding charge of food grains of several cores beside records.

7. From the pleading, documents & evidence it is crystal clear that the complainant was not relieved from his place of posting at Bihar Sharif to Odisha on 25.08.2012 as no substitute was posted there to take charge from him and he was continuing there till the date of his retirement as per payroll Ext- w-11, therefore, the charges levelled against the complainant about wilful disobedience of transfer order is base less & false and he was punished with a view to victimize him for his trade union activities.

8. The Opp. Party has failed to prove the charges either on the basis of evidence or documents. The charges are falsified from the fact that he was paid his salary for the month of Sep' 12 from Patna and his name was continuing in the pay roll of Patna till the date of his retirement i.e. 31.01.2014 vide Ext- w-10 series & w-11 and his place of posting is also shown at Patna in zonal office agenda dated 07.01.2014, therefore, he shall be paid his salary and allowances till his retirement along with post-retirement benefits from Patna office of FCI as his pay till retirement has already been drawn at Patna.

9. The domestic enquiry was also an eye wash and the IO has conducted the enquiry as per dictate of the Opp. Party and the Opp. Party was predetermined to any how punish the complainant even in violation of statutory provision & rules of the enquiry. As per regulation 60 A(1) of FCI Staff Regulation 1971 "Any disciplinary proceeding of retired employee has to be concluded by the authority who has initiated the proceeding. In this case the proceeding was initiated by GM Bhubneshwar and IO was appointed by him and he was the authority to finalize the proceeding as per regulation 60 A(1) of FCI staff regulation 1971 if the same is validly initiated. But surprisingly the IO has submitted the report to the Opp. Party who was not competent to decide the same and this goes to show that how Opp. Party was deeply interested and how the IO has acted in gross violation of statutory rule of inquiry and acted as per dictate of the Opp. party and submitted report which is against the evidence & documents on record. The

conduct of the inquiry officer is highly deplorable and his entire action was unjust & improper.

10. The complainant has referred a judgement of Hon'ble Supreme Court reported in AIR 1996 page 1969, State Bank of Patiala and Others Vrs S.K. Sharma. The relevant portion of the said judgement is reproduced herein under:- "Complaint of violation of procedural provision should be examined from the point of view of prejudice, viz. whether such violation has prejudice of delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate order have to made to repair and remedy the prejudicate, including setting aside the inquiry or order of punishment. If no prejudice is established to have resulted there from, it is obvious no interference is called for. In this connection it may be remembered that there may be certain procedural provisions which are of a fundamental character whose violation by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of judgement, take a case where there is a provision expressly providing that after the evidence of the employer is over the employee shall be given an opportunity to lead defence in his evidence, and in a given case the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be call for in such a case.

11. In another judgement of the Hon'ble Patna High Court reported in BLJR 1981 page 309 has also held in para 7 which is reproduced as under:-

"The position of delinquent staff being a kin to that of accused in a criminal trial, it is incumbent on the department concerned to allow an opportunity to the delinquent officer or staff to adduce evidence after the prosecution witness is over. If no such opportunity is allowed it will clearly be an infraction of the rule of natural justice causing serious prejudice to the delinquent staff. Rules of natural justice demanded that a clear opportunity should have been provided to the delinquent to adduce evidence by defence if desired. In the fact and the circumstance of this case the denial of such opportunity to the petitioner was an action in utter violation in the rules of natural justice introducing serious infirmity in the impugned order rendering illegal"

12. As per Apex court judgement the copy of inquiry report has to be given to the delinquent before order of penalty and delinquent has right to make representation over the IO report but copy of the inquiry report was not given and thus the complainant was denied this opportunity which is in violation of principle of natural justice. However the copy of the IO report was made available as per order of this Tribunal during hearing of this case but the findings mentioned in the report of the IO is against the evidence

given by him and also against the documents on record and is perverse.

13. The serious prejudice was caused to the workman by not providing the report of the IO. Ext. w-7 is the order of punishment passed by the Opp. Party on 29.01.2015 where under penalty of reduction to the lower grade in minimum pay scale was awarded against the complainant but the order was given retrospective effect w.e.f 31.01.2014 i.e. the date of retirement of the complainant which itself is illegal and unjustified and is not sustainable in the eye of law as any order affecting the right and privileges of an employee shall not be given retrospective effect. Therefore, the impugned order is illegal, arbitrary, whimsical and malafide. Beside the above in view of the Hon'ble Apex Court judgement reported in AIR 2002 SC page 643 (1) it was mandatory for the Opp. Party to take prior permission from this Tribunal before passing the order of penalty dated 29.1.2015 but the Opp. Party has failed to do so therefore, the order of penalty becomes ineffective from the date it was issued on this ground alone.

14. In this case vide order dated 09.06.2015 the inquiry has already been held unfair & improper and Opp. Party has completely failed to lead any evidence to justify the charges against the complainant and the complainant has successfully disown the charges by documents and evidence. Therefore, entire enquiry as well as punishment dated 29.01.2015 is held illegal & unjustified and he is restored to his original post & pay. Further the complainant is entitle to get his salary and allowances from October 2012 to 31.01.2014 alongwith all pecuniary benefits of promotion and post retirement benefit of Manager. If the award is not implemented within two months from the date of publication of the award in the official Gazette of India, the amount will carry simple interest of 6% P.A.

This is my award

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 फरवरी, 2016

clk-vk- 326.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नवयुवा इंजीनियरिंग कंपनी एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना के पंचाट (संदर्भ Case No. 01 (C) of 2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09/02/2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 16th February, 2016

S.O. 326.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D Case No. 01

(C) of 2015) of the Industrial Tribunal, Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the M/S Navyuva Engineering company and others and their workmen, which was received by the Central Government on 09/02/2016.

[No. L-42025/03/2016 - IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No.- 01 (C) of 2015

Between The management of (1) Project Manager, M/S Navyuva Engineering Company Act working as petty/ construction contractor in the project of N.T.P.C, Barh (Patna), (2) N.T.P.C through its General Manager, Barh, (3) H.R. Manager, N.T.P.C, Barh and their workmen (1) Sri Sanjay Kumar Pandey, S/O- Sri Ramchandra Pandey, resident of Kajmunni Chak, Baillypur (Ward No.- 20), P.O & P.S- Barh, Dist.- Patna, (2) Binod Sah, (3) Ravi mandel, (4) Sanjeev Kumar Paswan, (5) Anil Kumar @ Anil Ram, (6) Rajesh Kuamr @ Rajesh Sah, (7) Ravi Kumar, (8) Niranjana Kumar, (9) Prabhakar Singh.

For the management : Sri Ritesh Kumar, Advocate
(O.P.No.-1)

: Sri Prahalad Prasad, Deputy
Manager (HR), NTPC, (O.P.
No.- 2 & 3)

For the workman : Sri Nivas Madhuan,
Advocate.

: Sri Himanshu Kumar,
Advocate.

Present : Bipin Dutta Pathak, Presiding
Officer, Industrial Tribunal,
Patna.

AWARD

Patna, dated the 29th January, 2016

1. The present case has been filed on behalf of the workmen with a prayer for direct the concerned respondents to pay all the statute dues prayed for in paragraph no.-1 of the application.

2. In para-1 reply claimed has been stated for a direction to reinstate the services of applicants at their respective work as usual with full back wages and other consequential benefits. Other claim also been made.

3. Matter was raised before the Assistant Labour Commissioner (Central), Maurya Lok Patna. Lastly on 21.01.2015 Assistant Labour Commissioner (Central) sent

letter to the Secretary, Ministry of Labour and Employment, Govt. of India, New Delhi regarding failure of conciliation.

4. N.T.P.C (O.P.No.- 2 & 3) appeared in this case through Sri Prahalad Prasad, Dy. Manager, HR, and respondent, Navyuva Engineering Company Ltd. appeared through Mr. S.S. Roy-Manager Liaison.

5. On 10th August, 2015 time petition has been filed on behalf of the respondent no.-1 stating that in this matter Reference Case No.- 14, 15 of 2015 and other analogous cases are pending for adjudication before the tribunal at Dhanbad.

6. A petition has been filed on behalf of the respondent no.-2 & 3 on 05.11.2015 that NTPC was have no role neither in engagement or termination by M/S Navyuva Engineering Company Ltd. NTPC is only proforma respondent to the dispute and has no role whatsoever in this matter.

7. Management (O.P.No.-1) has filed preliminary objection stating therein that in respect of applicant no.-5 Anil Kumar, the appropriate government is the State Government and not the Central Government. Other statement has also been made and prayer has been made to decide preliminary objection.

8. A photo stat of the reference sent to Central Government Industrial Tribunal-cum- Labour Court No.-2, Dhanbad has also been filed from which it appears that Reference Case has been sent to Dhanbad to adjudicate "Whether the action of the management of M/S Navayuga Engineering Co. Ltd to terminate the service of the workman Shri Binod Sah without his outstanding dues of wages, Leave Encashment and terminal benefits was correct? If not, what relief the workman is entitled for?" Other notification in respect of other workmen has also been filed. On 05.11.2015 a petition has been filed, duly signed by nine (9) workman, who has filed case in this tribunal and in the same matter case of eight (8) workmen is pending before CGIT No.-2, Dhanbad. Prayer has been made to close this case and all the eight (8) workmen are withdrawing there case.

9. All the nine applicants appeared in this tribunal for there evidence. All the workman stated that the case which has been filed here, in the same matter, case is pending before CGIT No.-2 Dhanbad and all the eight (8) workmen are withdrawing their case and wanting to withdraw the case. Though all the nine workmen who are petitioner here in, have stated that all the eight workmen are withdrawing there case. W.W-3 Anil Kumar has stated that he will separately raise his claim before Govt. of Bihar and he does not want to contest this case. He will file separate case so he wants to withdraw the case. Cross-examination of all the witnesses has been declined by the management.

10. Heard all the parties and perused the record.

11. Claim has been made only against the M/S Navyuva Engineering Company Ltd. who is petty/contractor in the project of NTPC Barh. As such NTPC, Barh is only a proforma respondent. Since all the workmen have not raised their claim in their respective evidences and all the workmen want to withdraw their case. No dispute has been raised in the evidences of the workmen.

AWARD

12. Since there is no claim and evidence in respect of the claim made by the petitioners. So award is hereby passed as "No Dispute Award". No dispute award is passed accordingly.

Dictated & Corrected by me.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

dk-vk-327.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एअर इण्डिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्णाकुलम के पंचाट (संदर्भ संख्या 38/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था ।

[सं. एल-11012/09/2014—आई आर (सीएम-1)]

एम.के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 327.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Ernakulam (Ref. No. 38 of 2014) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India Ltd. and their workmen, which was received by the Central Government on 10.02.2016.

[No. L-11012/09/2014-IR(CM-I)]

M.K.SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Friday the 29th day of January, 2016/9th Magha, 1937)

ID 38/2014

Union :

The General Secretary, Airlines Casual Employees Association, II/696, Near Pynadath Building, Kariyad, Angamaly, COCHIN - 683589

By Adv. Shri T.C. Krishna

Managements :

1. The General Manager, Air India Ltd., Airlines House, Meenamakkam, CHENNAI -

By M/s. Menon & Pai

2. The Station Master, Air India, Cochin International Airport, Cochin.

This case coming up for final hearing on 28.01.2016 and this Tribunal-cum-Labour Court on 29.01.2016 passed the following:

AWARD

This is a matter referred by the Central Government clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947).

2. The dispute referred for adjudication before this tribunal is:

"Whether the action of the Management of Air India in not increasing the wages of the casual labourers in Cochin International Airport as demanded by the Union is justified? To what relief the concerned workmen/Union is entitled to?"

3. After the receipt of the reference Order No.L-11012/09/2014-IR(CM-I) dated 15.05.2014 issued by the Ministry of Labour, Government of India, summons was issued to the union and management Nos.1 and 2 to appear and produce all documents and submit pleadings in support of their respective contentions. On receipt of the summons the union and the 1st management entered appearance through counsels. Management No.2 remained absent. Hence management No.2 was called absent and set ex-parte.

4. The matter was posted for claim statement by the union. On 27.01.2016, the union filed a memo which reads as follows:

"1. The issue referred for adjudication in the above industrial dispute is with regard to the justifiability of the action of the management of Air India in not increasing the wages of the casual labourers in Cochin International Airport as demanded by the Union.

2. Union had on 10/6/2004, submitted a charter of demand before the management in which the issue with regard to the increase of wages of the casual were also included. As the management refused to accept the demands of the Union, the issue was referred to this Honourable Court. By an award

dated 4/12/2008 in ID No.69/2006 this Honourable Court rejected all the main claims in the charter of demands submitted by the Union. Union challenged the said award before the Honourable High Court of Kerala in WP(C) No.12008/09. By judgment dated 9/10/2014 the award was set aside and the matter has been remanded for fresh consideration. A copy of the judgment is yet to be received.

3. The issue with regard to the increase of wages of the casual workers of Air India is one of the issues in ID 69/2006. In the circumstance, the above industrial dispute may be closed reserving the right of the Union to agitate the issues referred in ID 69/2006".

5. Notice of this memo was given to the counsel for management No.1. Heard both sides.

6. From the memo dated 27.01.2016 filed by the union it is seen that the dispute to be decided as per this reference is the same along with other issues to be decided in ID No.69/2006. The union has stated that as per the decision in WP(C) No.12008/2009 dated 09.10.2014 passed by the Hon'ble High Court of Kerala, Ernakulam ID 69/2006 is remanded to this tribunal for adjudication afresh. Hence the union has requested to close this reference reserving their right to agitate the issues in ID 69/2006.

7. In view of the request made by the union as per the memo dated 27.01.2016, this ID is closed reserving the right of the parties to agitate the dispute referred in ID 69/2006, in accordance with the decision in WP(C) No.12008/2009 dated 09.10.2014 passed by the Hon'ble High Court of Kerala, Ernakulam.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 29th day of January, 2016.

SASIDHARAN K., Presiding Officer

APPENDIX - NIL

नई दिल्ली, 10 फरवरी, 2016

dk-vk- 328.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट

(संदर्भ संख्या 03/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था ।

[सं. एल-20012/53/2011-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 03 of 2012) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 10.02.2016.

[No. L-20012/53/2011-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL(NO. 2), AT DHANBAD**

PRESENT : Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 03 OF 2012

PARTIES :

The Jt. General Secretary,
Colliery Mazdoor Congress,
Bengal Hotel, 2, Md. Hussain Street (Piper Gali)
PO: Asansol, Distt: Burdwan, (W.B.)

Vs.

The General Manager,
E.J. Area of M/s BCCL, PO: Bhowra,
Distt: Dhanbad.

Order No. L-20012/53/2011-IR(CM-I) dt.20.12.2011

APPEARANCES :

On behalf of the : Mr.N.M.Kumar, Ld. Advocate
workman/Union

On behalf of the : Mr.D.K.Verma, Ld. Advocate
Management

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 28th Dec. 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/53/2011-IR(CM-I) dt. 20.12.2011.

SCHEDULE

Whether the action of the Management of Bhowra (S) Colliery of M/s BCCL in dismissing Sri Raj Kumr Bhuia from the services of the Company vide order dated 28.09.2004 is justified? To what relief the workman concerned is entitled to ?

On receipt of the Order No. L-20012/53/2011-IR (CM-I) dt.20.12.2011 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 03 of 2012 was registered on 04.01.2012 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Counsels appeared respectively, and contested the case.

2. The substituted applicant is the widow of the deceased, dismissed workman Late Raj Kumar Bhuia. Since the deceased workman died, his widow has no claim got. But taking her condition, it is ordered to give her one time-compensation of Rs.40, 000/- , since she is the widow of the deceased ex-workman.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

dk-vk- 329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 04/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था ।

[सं. एल-20012/126/2012—आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 329.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 04 of 2013) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 10.02.2016.

[No. L-20012/126/2012-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD**

PRESENT : Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO 04 OF 2013

PARTIES :

The Joint Secretary, (C)
Rastriya Mazdoor Union,
Head Office: Chiragora, Dhanbad.

Vs.

The General Manager
Kustore Area of BCCL
P.O. Kustore, Dhanbad.
Order No. L-20012/126/2012-IR(CM-I) dt.27.12.2012

APPEARANCES:

On behalf of the : Mr.M.N.Rewani , Ld Advocate
workman/Union

On behalf of the : Mr.D.K.Verma , Ld.Advocate
Management

State: Jharkhand

Industry : Coal

Dated, Dhanbad, the 21st Dec., 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/126/2012-IR (CM-I) dt. 27.12.2012.

SCHEDULE

“Whether the action of the Management of Simlabahal Colliery of M/s BCCL in dismissing Sri Raj Kumar Paswan, Ex-P/R, M/Loader from the services of the Company vide order dated 28.09.2001 is legal and justified? To what relief is the concerned workman entitled?”

On receipt of the Order No. L-20012/126/2012-IR (CM-I) dt. 27.12.2012 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 04 of 2013 was registered on 15.01.2013 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Counsels appeared respectively, and contested the case.

2. The workman concerned Sri Raj Kumar Paswan a permanent employee in Simlabahal Colliery of M/s BCCL. This case also relates to dismissal of the workman on the ground of absentism. Nothing adverse report is registered against the workman and there is nothing unusual on the part of the workman to resort to prolonged leave on compelling situation in maximum cases in vague or not in explicit manner just because to evade work in the Coal Mine, that is often hazardous and sometimes proved risky. Therefore in the interest of natural justice, it is felt that the workman be provided to prove his worthiness. Therefore the workman concerned be taken as a fresh employee in the lowest Grade but without back wages whatsoever, and he be kept under probation for two years treating as fresher.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

dk-vk- 330.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था ।

[सं. एल-20012/103/2012—आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 34 of 2013) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 10.02.2016.

[No. L-20012/103/2012-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 34 OF 2013

PARTIES :

The Gen. Secretary,
Koyla Ispat Mazdoor Panchayat,
Chhatabad No.5, PO: Katras,
Dhanbad (Jharkhand).

Vs.

The General Manager
Govindpur Area of BCCL,
P.O. Sonardih, Dhanbad.
Order No. L-20012/103/2012-IR(CM-I) dt. 08.02.2013

APPEARANCES :

On behalf of the : Mr.B.B.Pandey, Ld. Advocate
workman/Union

On behalf of the : Mr. D. K. Verma, Ld. Advocate
Management

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 21st Dec., 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/103/2012-IR (CM-I) dt. 08.02.2013.

SCHEDULE

“Whether the action of the Management of New Akash Kinari Colliery under Govindpur Area of M/s BCCL in dismissing Sri Chaita Kisku, Ex-General Mazdoor from the services of the Company from 09.06.1998 is fair and justified? To what relief is the concerned workman entitled to?”

On receipt of the Order No. L-20012/103/2012-IR (CM-I) dt. 08.02.2013 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 34 of 2013 was registered on 01.03.2013 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Counsels appeared respectively, and contested the case.

2. The Reference case is related to the workman named Sri Chaita Kisku, Ex. Gen. Mazdoor, whose service

was dismissed of the Colliery absentism behind his dismissal as ground. During the period of leave, the departmental enquiry was constituted but the same was remained inconclusive just because copy of the proceedings was not provided to the workman individually, as alleged by the workman. Allegations and counter allegations by both the parties exist in forms of written statement and W.S. cum rejoinder respectively.

Coal Mines jobs are undeniably tougher and arduous in nature particularly in the underground. And the general conception has always negative as long span of working at a stretch will definitely tell upon the health and the workmen are always apprehensive of the safety mechanism, so they left no stone unturned in efforts to proceed on leave on the pretext of ground or other. So in the interest of the natural justice and to make it more reasonable, there will not be unfair and unjust if the workman is offered one more opportunity to reform himself by reinstating him in the service as a fresher in the lowest grade but without back wages whatsoever, for a probation for two years treating from the date, he joins. Accordingly the workman be provided one more opportunity to join the duty as a fresher in the lowest Grade but without back wages with probation rolling up to two years.

R.K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

dk-vk 331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 41/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था।

[सं. एल-20012/30/2015—आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 331.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 41 of 2015) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 10.02.2016.

[No. L-20012/30/2015-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act., 1947.

REFERENCE NO. 41 OF 2015

PARTIES :

The Central Secretary,
Bihar Colliery Kamgar Union,
PO: Dugda Coal Washery, Bokaro

Vs.

The General Manager
Western Jharia Area of M/s BCCL
P.O. Moonidih, Dhanbad.

Order No. L-20012/30/2015-IR(CM-I) dt. 09.06.2015

APPEARANCES :

On behalf of the : Mr.D.Mukherjee, Ld. Advocate
workman/Union

On behalf of the : Mr.D.K.Verma, Ld. Advocate
Management

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 21st December, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/30/2015-IR (CM-I) dt. 09.06.2015.

SCHEDULE

Whether the action of the Management of Bhatdih Colliery under WJA Moonidih of M/s BCCL in dismissing Sri Shiv Lal Mahato, M/Loader from the services vide office order dated 27/29.10.0004 is fair and justified? To what relief the concerned workman is entitled to ?”

On receipt of the Order No. L-20012/30/2015-IR (CM-I) dt. 09.06.2015. of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 41 of 2015 was registered on 29.06.2015 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Counsels appeared respectively, and contested the case.

2. The workman concerned Sri Shiv Lal Mahato, an permanent employee as M/Loader in Bhatdih Colliery with unblemished track record of service, but, due to illness and suffering from it, he started absents, and the Management dismissed him from his service after completing necessary formalities. The working conditions particularly in the Coal Mines exist to some extent hazardous and in underground Mines, sometimes, proved fatal despite proper safety mechanism in place and their improvement from time to time. Mostly workmen, recruited much earlier are mostly illiterate and do not keep themselves abreast of the rules and regulations, agreements, bye-laws of the Coal Mines. The punishment imposed as dismissal citing the absenteeism ground does not match proportionate to misconduct, the workman committed and that will definitely put the workman in trouble. Therefore in the interest of natural justice, it is of the view that one more chance could rekindle hopes to the workman to prove his worthiness. Therefore The workman concerned be taken as a fresh employee in the lowest grade but without back wages whatsoever; and he be kept under probation for two years treating as fresher.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

dk-vk 332.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 100/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-02-2016 को प्राप्त हुआ था ।

[सं. एल-20012/134/2012-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 332.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 100 of 2013) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 10.02.2016.

[No.L-20012/134/2012-IR(CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT :

Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

REFERENCE NO. 100 OF 2013

PARTIES :

The Jt. General Secretary,
Koyla Ispat Mazdoor Panchayat,
Chhatabad No.5, P.O. Katras, Dhanbad

Vs.

The General Manager,
Govindpur Area of M/s BCCL.
PO: Sonardih, Dhanbad.

Order No. L-20012/134/2012-IR(CM-I) dt.01.03.2013

APPEARANCES :

On behalf of the : Mr. B.B.Pandey, Ld. Advocate
workman/Union

On behalf of the : Mr. D.K.Verma, Ld. Advocate
Management

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 28th December, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-20012/134/2012-IR(CM-I) dt.01.03.2013

SCHEDULE

“Whether the action of the Management of New Akash Kinari Colliery of M/s BCCL in dismissing Sri Amrit Beldar, PR Trammer from the services of the company vide order letter dated 05.04.2005 is fair and justified? To what relief is the concerned workman entitled to?”

On receipt of the Order No. L-20012/134/2012-IR (CM-I) dt.01.03.2013 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 100 of 2013 was registered on 09.04.2013 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court

on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Counsels appeared respectively, and contested the case.

2. Short point to be decided in this reference is, whether the workman, who has been dismissed on the ground of absentism, is to be reinstated along with other ancillary reliefs. Documents of the Management, have been marked as exhibits. The enquiry held fair and proper. No oral evidence adduced from either side. It is submitted by the workman that while he was under treatment, the Management dismissed the workman on the ground of absentism. But the Management justified its action of dismissal. But it is seen, that the workman was treated in BCCL Hospital during his absence on duty.

Therefore it is ordered to take the workman as fresh employee, in the category where he was working. It is submitted that the workman was previously working as Cat. IV workman. If the workman was in Cat. IV, he be allowed to work in the same Category as fresh employee.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 फरवरी, 2016

dk-vk 333.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 119/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/02/2016 को प्राप्त हुआ था ।

[सं. एल-20012/17/2013-आई आर (सीएम-1)]

एम.के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th February, 2016

S.O. 333.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 119 of 2013) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 10.02.2016.

[No. L-20012/17/2013-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 119 OF 2013

PARTIES :

The Secretary,
Koyla Ispat Mazdoor Panchayat,
Post Box No. 59, PO: Jharia, Dhanbad.

Vs.

The General Manager
Kustore Area of BCCL
P.O. Jharia, Dhanbad.

Order No. L-20012/17/2013-IR(CM-I) dt. 20.05.2013

APPEARANCES :

On behalf of the : Mr.S.C.Gaur, Ld. Advocate
workman/Union

On behalf of the : Mr.U.N.Lal Ld. Advocate
Management

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 21st December, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/17/2013-IR (CM-I) dt. 20.05.2013.

SCHEDULE

"Whether the action of the Management of Hyrrilladih Colliery of BCCL in dismissing Sri Rajesh Kumar, Ex-M/Loader from the services of the Company vide order dated 1/4.08.2007 is fair and justified? To what relief the concerned workman is entitled to?"

On receipt of the Order No. L-20012/17/2013-IR (CM-I) dt. 20.05.2013 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 119 of 2013 was registered on 12.06.2013 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Counsels appeared respectively, and contested the case.

2. This is the Reference Case of dismissal of the workman of Shri Rajesh Kumar as a Piece Rated M/Loader of M/s BCCL, sponsored by the Union, Koyla Ispat Mazdoor Panchayat. So long as adverse report, the workman had been all along unblemished service track record and was hard working and honest and devoted to his duty, as stated in W.S. The workman incidentally went on long leave probably one and half month or so, and the Management of Hyrrilladih Colliery, as alleged, without going into the bottom of the fact inflicted harsher and major penalty of dismissal from the service. However, it cannot be ruled out of the fact about the workman turning habitual absentee in latter stage. During hearing the Tribunal tried to go to bottom of the fact that this is not the new case of the nature as being explained here, there are countless instances of such cases arisen out of little knowledge of workmen about rules, agreements, and by laws, and of their service conditions, that too are being regulated and governed. Though the Management in a very calculative move and cautiously went ahead in dismissing the workman under the framework of the rules /agreement etc.

However allegations and counter allegations by both the parties exist in form of written statement and W.S. cum rejoinder respectively. General perception amongst the workers always tends to proceed on leave in view of nature of the job which calls for more physical labour and to work in unhygienic atmosphere not at all conducive for health. The punishment of major penalty in form of dismissal in no way stands logic and proportionate to the misconduct charge committed by the workman, reported to have been proved. So in the interest of the natural justice and to take it for more pragmatic approach towards the issue, there will not be unfair and unjust if the workman is offered one more opportunity to reform himself by reinstating him in the service as a fresher in the lowest grade but without back wages whatsoever, for a probation for two years treating from the date, he joins. Accordingly it is being ordered that the workman be provided one more opportunity to join the duty as a fresher in the lowest grade without back wages with probation extending up to two years.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 फरवरी, 2016

dl-vk- 334.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तेल एवं प्राकृतिक गैस निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के

पंचाट (संदर्भ संख्या 640/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/02/2016 को प्राप्त हुआ था।

[सं. एल-20040/50/1995—आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th February, 2016

S.O. 334.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad (Ref. No. 640 of 2004) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Oil & Natural Gas Corporation and their workmen, which was received by the Central Government on 16.02.2016.

[No. L-20040/50/1995-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer,
CGIT cum Labour Court, Ahmedabad,

Dated 17th December, 2015

Reference: (CGITA) No-640/2004

Reference: (ITC) No-12/1996

The Officer on Special Duty (Projects),
Oil & Natural Gas Corporation Ltd.,
Ankleshwar Gandhar Project,
Ankleshwar

...First Party

Vs.

Their Workman,
Smt. Rafatbanu G. Shaikh,
C/o. Andur Rauf G. Kapadia,
Mullawad,
Ankleshwar

...Second Party

For the First Party : C.S. Naidu, Associates

For the Second Party : Sh. Mohd. Irfan
A. Sujniwala, Advocate

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-20040/50/95-IR(Coal-I) dated 23.08.1996 referred the dispute for adjudication to the Industrial Tribunal, Baroda (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the contention of Smt. Rafatbanu G. Shaikh that she was an employee of ONGC (Now ONGC Ltd.) Ankleshwar and her services were illegally terminated by the management w.e.f. 01.05.1991 is justified? If so, to what relief is Smt. Rafatbanu G. Shaikh entitled?”

2. This reference dates back to 23.08.1996. Second party filed his statement of claim(Ext.4) and first party also filed written statement (Ext.20). Thereafter the reference was fixed for evidence for the second party but despite giving dozens of opportunities to the second party to lead evidence but second party did not lead evidence which indicates that second party has no inclination or willingness to lead in the reference. First party has also not responding. Thus, the Tribunal has no option but to dismiss the reference in default of the workman (second party).

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 फरवरी, 2016

dk-vk- 335.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एअर इण्डिया लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 570/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/02/2016 को प्राप्त हुआ था ।

[सं. एल-11012/05/2002—आई आर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th February, 2016

S.O. 335.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad (Ref. No. 570 of 2004) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India Ltd. & Others and their workmen, which was received by the Central Government on 16.02.2016.

[No. L-11012/05/2002-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
AHMEDABAD**

Present : Pramod Kumar Chaturvedi, Presiding Officer,
CGIT cum Labour Court, Ahmedabad,
Dated 10th December, 2015

Reference: (CGITA) No-570/2004

Reference:(ITC) No. 44/2003

1. The Director,
Air India, Ahmedabad
Airport, Ahmedabad
2. M/s Philipson Corporation,
303/220, Shiv Shakti Nagar,
Ahmedabad

...First Party

Vs.

Their Workmen,
Through The working President,
Gujarat Mazdoor Panchayat,
“Shram Shakti”, P.B. No. 77,
Mirzapur Road, Opp. Prabhat Press,
Ahmedabad

...Second Party

For the First Party : Sh. K.V. Gadhia, Advocate

For the Second Party :

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L-11012/5/2002-IR(C-I) dated 19.08.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the termination of service of Shri Prakash Vaghela, Shri Vijaybhai Goklani, Shri Pankajbhai Chauhan and Shri Bharat Solanki by the management of Air India and/ or M/s. Philipson Corporation is legal and justified? If so, to what, relief are the concerned workman entitled?”

2. This reference dates back to 19.08.2003 and was registered on 19.09.2003. Second party filed the Statement of claim (Ext.4) and first party filed the written statement (Ext 7) on 30.03.2005. Since then neither of the parties have been appearing to lead the evidence.

3. Thus, in the circumstances of the case when neither of the parties have been appearing in such an old reference. Tribunal has no option but to dismiss the reference in default of the parties.

Reference is dismissed in default of the parties.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 17 फरवरी, 2016

dk-vk- 336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केन्द्रीय विद्यालय संगठन, गांधीनगर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सीजीआईटीए सं. 996/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/02/2016 को प्राप्त हुआ था।

[सं. एल-42012/199/94-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 17th February, 2016

S.O. 336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D Reference (CGITA)No.996/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kendriya Vidyalaya Sangathan, Gandhinagar and their workman, which was received by the Central Government on 17/02/2016.

[No.L-42012/199/94-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer,
CGIT cum Labour Court, Ahmedabad,

Dated 21st January, 2016

Reference: (CGITA) No-996/2004

Reference: (ITC) No – 9/1996

1. The Asst. Commissioner,
Kendriya Vidhyalaya Sangathan,
Sector No. 30,
Gandhinagar
 2. The Principal,
Kendriya Vidhyalaya (ONGC),
Mehsana-385002
- Vs.**
- Their Workman
Sh. B.M. Manilal,
Amtol Darwaja, Bhagiwas,
Vadnagar, Post Kerala, Pin-384355
Dist Mehsana (N.G.)- 384355
- ...First Party
- ...Second Party
- For the First Party : Sh. Mukeshbhai R. Prajapati,
Advocate
- For the Second Party:

AWARD

The Government of India/Ministry of Labour , New Delhi by reference adjudication Order No. L- 42012/199/94-IR(DU) dated 27.12.1995 referred the dispute for adjudication to the Industrial Tribunal, Rajkot (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of Assistant Commissioner, Kendriya Vidhyalaya Sangathan, Gandhinagar and the Principal, Kendriya Vidhyalaya, Mehsana (NG) in terminating the services of Shri Manilal M. Bhanghi, Sweeper is justified? If not, to that relief the workman is entitled?”

2. This reference dates back to 27.12.1995. Second party submitted his statement of claim on 12.08.1996 and first party submitted written statement on 29.09.1997 since then the second party has not been leading evidence. The advocate Sh. Mukeshbhai R. Prajapati has been representing first party but second party is absent. Thus, it appears that second party is not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 17 फरवरी, 2016

dlk- vk- 337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड, जोधपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. 15/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 28/01/2016 को प्राप्त हुआ था।

[सं. एल-40011/01/2015-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 17th February, 2016

S.O. 337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I. D No.15/2015) of the Central Government Industrial Tribunal Cum Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited, Jodhpur and their workmen, which was received by the Central Government on 28/01/2016.

[No.L-40011/01/2015-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT,,JAIPUR**

BHARAT PANDEY, PRESIDING OFFICER

I.D. 15/2015

Reference No.L-40011/01/2015-IR(DU)

dated: 16.2.2015

Shri Pukhraj Sain
S/o Shri Mohan Kishan Sain
C/o Rajasthan Trade Union Kendra
Pradhan Karyalaya-Surat Singh Ji Ki Kothi,
Sojti Gate ke bahar
Jodhpur-342008.

 V/s

1. The Divisional Engineer (Admin)
Bharat Sanchar Nigam Limited
Deptt. Of Telecom, GMTD Office,
Subhash Nagar, Pal Road,
Jodhpur -342008.
2. The Assistant General Manager
Bharat Sanchar Nigam Limited,
Deptt. of Telecom
Subhashnagar, Pal Road,
Jodhpur -342008.

AWARD

17.12.2015

1. The Central Government in exercise of the powers conferred under clause (d) of Sub section 1 and 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन सहायक महाप्रबंधक, भारत संचार निगम लिमिटेड, सुभाषनगर, पाल रोड, जोधपुर (राज0) व 2—संभागीय अभियंता (प्रशासनिक), जीएमटीडी कार्यालय, भारत संचार निगम लिमिटेड, सुभाषनगर, पाल रोड, जोधपुर (राज0) 3— मुख्य महाप्रबंधक, भारत संचार निगम लिमिटेड, मुख्यालय, जयपुर द्वारा कर्मकार श्री पुखराज सैन पुत्र श्री मोहन किशन सैन को नियमित करने की कार्यवाही बैद्यानिक एवं न्याय संगत है, यदि नहीं तो प्रार्थी किस राहत का और कब से पाने का हकदार हैं?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal dated 2.3.2015 fixing 24.6.2015 for filing statement of claim. On 24.6.2015 applicant appeared in person & stated that he has not appointed his counsel,

hence, case be adjourned for filing statement of claim & appointment of counsel. Sh. Altaph Hussain Rahi, Sub-Divisional Engineer (HRD) appeared on behalf of opposite party BSNL. 7.9.2015 was next date fixed for filing statement of claim.

3. On 7.9.2015 applicant appeared in person but statement of claim was not filed. Authority of Sh. A.N. Jain on behalf of opposite party was filed who appeared on behalf of opposite party. Sh. Altaph Hussain Rahi, Sub-Divisional Engineer (HRD) also appeared from opposite party. Case was adjourned for filing statement of claim on 30.11.2015 as requested by applicant. Applicant appeared in person. None appeared on behalf of opposite party. An application was moved by applicant for withdrawal of the case. As the applicant was not identified by his representative on the application because he had not appointed his representative case was adjourned on the request of applicant. Applicant alleged that he will appear with his representative on next date fixed on 17.12.2015. It was ordered on 30.11.2015 that applicant may file claim on 17.12.2015 if he intends to file statement of claim.

4. On 17.12.2015 applicant Sh. Pukhraj Sain appeared in person. Sh. Altaph Hussain Rahi, Sub-Divisional Engineer (HRD) appeared on behalf of opposite party BSNL who filed an application to the effect that the department of BSNL has no objection in withdrawal of the case by applicant Sh. Pukhraj Sain. He has further alleged that there has been no pressure of any kind from the department on Sh. Pukhraj Sain to withdraw the case. Further, Sh. Altaph Hussain Rahi, Sub-Divisional Engineer (HRD) has made endorsement on the application of Sh. Pukhraj Sain to withdraw the case which reads as under :-

“No objection if Pukhraj Sain withdraw his case in his own behalf.” Sd/- Altaph Hussain Rahi, SDE (Admn), O/o GMTD Jodhpur BSNL.

5. The case was reserved for passing award on the basis of application of Sh. Pukhraj Sain for withdrawing the case. The application of the applicant Sh. Pukhraj Sain for withdrawing the case reads as under :-

deh; l j dkj vk| kfxd vf/kdj.k ,oa Je
U; k; ky;

प्रकरण संख्या 15 / 2015

प्रार्थी:-

बनाम

अप्रार्थी:-

श्री पुखराज सैन

बी. एस. एन. एल.

प्रार्थना पत्र वास्ते सेवा नियमितिकरण विवाद माननीय न्यायालय
से वापस लेकर केन्द्रीय सक्षम न्यायालय में प्रस्तुत करने बाबत

मान्यवर,

1. यह है कि प्रार्थी के द्वारा एक सेवा नियमितकरण विवाद उठाया गया जिस सेवा नियमितकरण विवाद को केन्द्रीय श्रम मंत्रालय के द्वारा माननीय न्यायालय हाजा में निस्तारण हेतु भेजा गया था।

2. यह है कि प्रार्थी के लिये माननीय न्यायालय हाजा में जो जयपुर में स्थित है प्रकरण को सुचारु रूप से संचालित करने में कठिनाई उत्पन्न हो रही है। क्योंकि प्रार्थी को वर्तमान में 33 वर्ष की नौकरी के बावजूद भी प्रतिदिन 405/— रुपये की दर के अनुसार 30 दिन के 12,150/— रुपये प्राप्त हो रहे हैं तथा उसमें भी 10 प्रतिशत विभाग द्वारा कटौती कर 1,250/— रुपये उसके वेतन में से कम दिये जा रहे हैं तथा प्रार्थी प्रति पेशी जयपुर आकर पैरवी करने में लगभग 1,200/— रुपये खर्च हो रहे हैं।

3. यह है कि समान प्रकृति के सेवा नियमितकरण विवाद पहले उच्च न्यायालय जोधपुर में निस्तारित हो चुके हैं। जिसमें कर्मचारी को उच्च न्यायालय के आदेश उपरान्त अनुतोष प्राप्त हुआ है।

4. यह है कि प्रार्थी भी समान प्रकृति के प्रकरण जिसमें अनुतोष कर्मचारी को प्राप्त हुआ है उसी आधार पर राजस्थान उच्च न्यायालय, जोधपुर या केन्द्रीय प्रशासनिक प्राधिकरण में शीघ्र न्याय प्राप्त करने हेतु प्रकरण लगाना न्यायहित में उचित समझता है तथा यह प्रकरण वर्तमान न्यायालय से हटाकर राजस्थान उच्च न्यायालय, जोधपुर या केन्द्रीय प्रशासनिक प्राधिकरण में दायर करना विधि अनुसार व न्यायोचित समझता है।

अतः प्रार्थना पत्र प्रस्तुत कर निवेदन है कि प्रार्थी को सेवा नियमितकरण विवाद माननीय न्यायालय से वापस लेकर उपरोक्त बताये गये सक्षम न्यायालय में प्रस्तुत करने हेतु इजाजत प्रदान करें।

प्रार्थी
हस्ताक्षर

पठनीय पुखराज सैन

No objection if Pukhraj Sain
Withdraw his case in his own behalf.
Altaf Husain Rahi
Signature Illegible
SDE (Admn)
% GMTD Jodhpur BSNL

6. Looking into content of the application of Sh. Pukhraj Sain it is clear that he is not interested in filing statement of claim & evidence for adjudication of the reference as stated above. He is interested in withdrawing the case before this tribunal based on reference under adjudication & presenting the matter for adjudication before the CAT or Hon'ble High Court of Rajasthan at Jodhpur. Accordingly, the application of the applicant is allowed & case of the applicant is dismissed as withdrawn.

The reference under adjudication is answered accordingly.

7. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 17 फरवरी, 2016

clk-vk- 338.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीईएल ओपट्रॉनिक देवीकेस लिमिटेड, पुणे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी 2/83 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/02/2016 को प्राप्त हुआ था।

[सं. एल-14011/10/2014-आई आर (डीयू)]

पी.के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 17th February, 2016

S.O. 338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D Reference No.CGIT-2/83 of 2014) of the Central Government Industrial Tribunal Cum Labour Court No.2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the B.E.L. Optronon Devices Ltd., Pune and their workmen, which was received by the Central Government on 17/02/2016.

[No.L-14011/10/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/83 of 2014

**EMPLOYERS IN RELATION TO THE MANAGEMENT
OF B.E.L. OPTRONON DEVICES LTD.**

The Chief Executive Officer
BEL Optronon Devices Ltd.
EL-30, 'J' Block, MIDC
Pune 411 026.

AND

Their Workmen
The President
BEL Optronon Devices Employees' Union
EL-30, J-Block
MIDC
Pune 411 026.

APPEARANCES:

FOR THE EMPLOYER : Mr. S. N. Desai, Advocate

FOR THE UNION : Mr. Umesh Vishwad,
AdvocateMumbai, dated the 27th January, 2016**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-14011/10/2014-IR (DU), dated 01.09.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of BEL Optronics Devices Ltd., Pune in declaring the plant performance incentive unilaterally without showing any base or formula is justified? If not to what relief the union is entitled to?”

2. After receipt of the reference, both parties were served with notice. The reference was fixed for filing of Statement of Claim by the Union. In response to the notice, Second party union filed their Statement of Claim at Ex-7. On 13/2/2015 union filed application Ex-9 for interim relief. Management filed their Say (Ex-10) on interim relief application and Written Statement at Ex-11.

3. The matter was fixed for hearing on Ex-9. On 19/10/2015, Union filed application (Ex-12) along with affidavit in support for withdrawing the Reference. Representative (General Secretary) of the Second Party Union prayed to dispose of this Reference as they are not interested in pursuing it further. After hearing both parties on Ex-12, today i.e. on 27/01/2016, Orders were passed on Ex-12. As the Second Party Union does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 27.01.2016

M. V. DESHPANDE, Presiding Officer